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Amtrak

February 16, 1994

VIA FEDERAL EXPRESS

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Agency, Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

Re: Paoli Rail Yard Superfund Site CERCLA Lien Proceeding, Docket No. III-93-004L -- Amtrak's Response to Documents in the Current Docket

Dear Ms. Lazos:

This letter constitutes the filing of the National Railroad Passenger Corporation ("Amtrak") in accordance with the December 8, 1993 scheduling order in the above-captioned proceeding.

I. INTRODUCTION

EPA initiated an enforcement action against Amtrak, Consolidated Rail Corporation ("Conrail") and Southeastern Pennsylvania Transportation Authority ("SEPTA") (hereafter collectively "the railroads") by filing a complaint in United States District Court in 1986. This case has been far from an ordinary CERCLA enforcement suit. It involves a number of unique issues, such as the relationship between CERCLA and specialized railroad statutes, judicial enforcement against a federal corporation, work performed by a Region III official who lacked the requisite credentials and who committed perjury in this action, and the extensive investigatory and remedial efforts by Amtrak and the other railroad PRPs through five separate judicial consent decrees over the entire course of the case.

As we demonstrate below, Region III does not have a reasonable basis for perfection of a Superfund lien against Amtrak's Paoli Rail Yard property. Amtrak has equitable, legal and factual arguments in opposition to the threatened attachment of Amtrak's property. Amtrak's legal arguments demonstrate defenses both to CERCLA liability and to perfection of a lien based upon any such liability. Perhaps most importantly, however, Amtrak's equitable arguments demonstrate that perfection of a lien against Amtrak's Paoli Rail Yard property will not serve the purposes intended by Congress or envisioned by EPA. Based upon the standard of review for proceedings such as this one, the Presiding Officer should recommend that Region III

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withdraw its Notice of Intent to perfect a CERCLA lien against Amtrak's property.[1]

II. APPLICABLE STANDARD OF REVIEW

EPA has published guidance regarding the purposes to be achieved by perfecting a Superfund lien and the procedures to be followed in proceedings such as this one. On September 22, 1987, EPA published "Guidance on Federal Superfund Liens," to instruct EPA's Regional Offices about how and why liens could be used to "enhance Superfund cost recovery." The Guidance recites that the congressional purpose of Superfund liens was "to facilitate the United States' recovery of response costs and prevent windfalls." Id. at 2. Section II of that Guidance sets forth specific policy objectives to be accomplished by Superfund liens. It notes that while EPA has the authority to file notice of a lien on any real property where Superfund expenditures have been made, "Regional offices should carefully evaluate the value of filing notice of a lien." Id. at 3.

OSWER Directive Number 9832.12-1a, "Supplemental Guidance on Federal Superfund Liens," dated July 29, 1993, specifically outlines procedures for Regional Counsel to follow. That Directive (at 7) requires the EPA official selected to conduct a meeting requested by a property owner to consider "all facts relating to whether EPA has a reasonable basis to believe that the statutory elements have been satisfied for the perfection of a lien." It specifies that the record for this proceeding may contain "any other information which is sufficient to show that the lien notice should not be filed." Id. It will be sufficient for the property owner to show that Region III has erred in believing that it has a reasonable basis to perfect a lien or that it has made a material error of fact or law. Id at 7, 9. Thus, under the terms of the 1993 Directive, the standard of review is whether Region III has been reasonable, not whether the it has been arbitrary, capricious or has abused its discretion.

The 1987 Guidance adds that a lien should be perfected where it will accomplish the goals specified by Congress and where it fits the situations outlined in section II (at 3-4) of that Guidance. Accordingly, if significant questions of fact and/or law exist, or if the perfection of a lien will not accomplish the purposes specified by Congress and the agency, the

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[1] The fact that Amtrak does not repeat in this submission all of the arguments it presented in its September 15, 1993 submission should not be construed as an abandonment or waiver of those arguments.

EPA official presiding over this proceeding should recommend that the lien not be perfected. See 1993 Directive at 8-10.

III. PERFECTION OF A SUPERFUND LIEN ON AMTRAK'S PAOLI RAIL YARD PROPERTY IS NOT REASONABLE BECAUSE IT WOULD SATISFY NONE OF THE PURPOSES SET FORTH IN EPA'S GUIDANCE THAT ARE TO BE ACCOMPLISHED BY SUPERFUND LIENS.

EPA's 1987 Guidance has described the purposes to be accomplished by Superfund liens. Since Amtrak already has fulfilled those purposes, there is no reasonable need for perfection of a CERCLA lien on Amtrak's property. The 1987 Guidance (at 1-2) specifies that Congress intended Superfund liens to "allow the Federal Government to recover the enhanced value of the property and thus prevent the owner from realizing a windfall from fund cleanup and restoration activities 131 Cong. Rec. S11580 (Statement of Sen. Stafford) (September 17, 1985)." The emphasis is on preventing unjust enrichment.

The 1987 Guidance continues by specifying the situations in which filing a notice of lien will be particularly beneficial to the government's efforts to recover costs. Those situations are: (1) the property is the chief or the substantial asset of the PRP; (2) the property has substantial monetary value; (3) there is a likelihood that the defendant owner may file for bankruptcy; (4) the value of the property will increase significantly as a result of the removal or remedial work; or (5) the PRP plans to sell the property. Id. at 3-4.

Amtrak's property already meets the purposes to be accomplished by a federal lien. First, the property is not the chief or even a very substantial asset of the Corporation. Second, the property does not have substantial monetary value. It is likely that its current value does not exceed Amtrak's share of the approximately $9 million of the work that already has been performed on the property under the judicial Consent Decrees with EPA. Third, there is no likelihood that Amtrak will file for bankruptcy. Fourth, the value of the property is unlikely to increase significantly after implementation of the solidification ROD, because the treated contaminated material will remain on the property and because the ROD requires deed restrictions on the property. Fifth, Amtrak has no current plans to sell the property. Indeed, the property is being used by SEPTA as an operating rail yard and will continue to serve that purpose at least through December 1994. Finally, since Amtrak's capital stock is owned by the federal government, Region III should not be concerned about preventing Amtrak from realizing a windfall because any windfall would inure to the benefit of the federal government.

The recommended decision dated October 25, 1993 in K & K Greenleaf Partnership (attached to Region III's Nov. 19, 1993 submission) is entirely consistent with the conclusion that no significant purpose will be served by perfecting a lien upon Amtrak's property. Under the finding of the Presiding Officer in that case, Amtrak, unlike K & K, has presented (infra) substantial factual and legal challenges to its liability for the expenses claimed by Region III on this record. Moreover, Amtrak, unlike K & K, has demonstrated that no unjust enrichment will occur.[2] I any event, any benefit would accrue to a federal corporation and would benefit the taxpayers.

The presiding officer for this proceeding already has requested that Amtrak confirm in writing the current status and use of the property and that the property is not currently for sale and/or that any prospective purchaser will be informed of this lien proceeding. Amtrak has done so. Letter to Regina M. Kossek, dated December 10, 1993. In Region III's November 19, 1993 submission (at 8), it stated that "[t]he perfection of the lien against Amtrak, therefore, is simply a manner of providing notice to any potential creditors of a lien which, by law, already exists, and to establish EPA's position in the creditor line." Since there are no non-governmental creditors in line for this property, no purpose will be served by imposing the lien suggested by Region III.

IV. SINCE AMTRAK HAS GOOD DEFENSES TO CERCLA LIABILITY, NO LIEN EXISTS AND NONE CAN BE PERFECTED.

Region III claims that the only defenses available to Amtrak in this proceeding to resist the perfection of a Superfund lien are those listed in CERCLA section 107(b) and assumes that all who are "covered persons" under section 107(a) are jointly and severally liable to EPA. Neither proposition is correct. In fact, Amtrak has quite a number of well-recognized legal defenses to CERCLA liability beyond those cited by Region III. Under section 107(a), Amtrak may be a "covered person;" it may even be strictly liable. However, its liability is not joint and several; it is divided by operation of federal railroad statutes and the court orders and deeds issued pursuant thereto. Similarly, Region III ignores section 107(b)'s underlying legal precept -- that a party has no liability to EPA for damages that result from governmental actions that are arbitrary, capricious, an abuse of discretion, the result of governmental misconduct, or simply not recoverable under CERCLA. As we demonstrate below, courts have routinely upheld such defenses to CERCLA liability,

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[2] See infra at 14-15.

in addition to those specifically listed in section 107(b).[3]

A. EPA's authority to perfect a Superfund lien against Amtrak is limited to Amtrak's divisible share of CERCLA liability.

EPA's authority to impose a Superfund lien is limited to the scope of the authority provided by Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), which provides in pertinent part as follows:

> All costs and damages for which a person is liable to the United States under subsection (a) of this section . . . shall constitute a lien in favor of the United States upon all real property and rights to such property which --
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> (A) belong to such person; and
>
> (B) are subject to or affected by a removal or remedial action.

(Emphasis added.) A lien for "costs and damages" under CERCLA section 107(l) cannot be based on an assumption of a property owner's joint and several where the owner's liability is divisible. Where, as here, liability is divisible, a lien could only arise for "costs and damages for which a person is liable to the United States."

Section 107(a) does not mandate joint and several liability in cases involving multiple defendants. Both the House and the Senate deleted provisions imposing joint and several liability from their respective versions of the statute before its enactment. See H.R. Rep. No. 253(I), 99th Cong. 2d Sess., 79-80 (1985), reprinted in 1986 U.S. Code Cong. & Admin. News at 2835, 2861-62. Courts have interpreted that deletion to require a determination, under traditional common law principles, of which circumstances require divided (as opposed to joint and several) liability. In re Bell Petroleum Serv., Inc., 3 F.3d 889, 903 (5th Cir. 1993); United States v. Alcan Aluminum Corp.,

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[3] Legal defenses to CERCLA liability are not limited to those listed in § 107(b). See, e.g., Transtech Industries Inc. v. A & Z Septic Clean, 798 F. Supp. 1079 (D.N.J. 1992)(in dicta); Mardan Corp. v. C.G.C. Music, Ltd., 600 F. Supp. 1049, 1056 n. 9 (D.Ariz. 1984), aff'd on other grounds, 804 F.2d 1454 (9th Cir. 1986). Even equitable defenses apply to actions under CERCLA. See, e.g., United States v. Hardage, 116 F.R.D. 460, 465 (W.D.Okl. 1987); United States v. Marisol, Inc., 725 F. Supp. 833, 844 (M.D.Pa. 1989).

990 F.2d 711, 721-22 (2d Cir. 1993); United States v. Alcan Aluminum Corp., 964 F.2d 252, 268 (3d Cir. 1992).

Amtrak currently is litigating the issue of its divisible liability before the Special Court, Regional Rail Reorganization Act of 1973, which has exclusive jurisdiction over that issue. See 45 U.S.C. §719, and see Amtrak's Briefs in Special Court No. 92-1, submitted for inclusion in the Record of this Proceeding at R. 1040-1092.[4] EPA's legal authority under CERCLA §107(a) to impose upon Amtrak costs and damages beyond Amtrak's divisible share of liability is directly at issue in that proceeding. Therefore, it is not reasonable for Region III to conclude that is has clear legal authority to perfect a lien against Amtrak's Paoli Rail Yard property for the entire amount of its past costs. Region III is simply wrong when it asserts, at 6-7 of its November 19, 1993 submission, that decisions regarding Amtrak's divisible liability rest with EPA.

B. **Amtrak cannot be held liable for "costs and damages" resulting from EPA's actions at Paoli Rail Yard that have been arbitrary, capricious or an abuse of discretion.**

EPA can only recover "costs and damages" for actions that are not arbitrary, capricious or otherwise not in accordance with law. Courts have routinely applied this standard in CERCLA cases. It simply is not the case that, as Region III asserts, "whether a remedy is arbitrary or capricious or whether EPA caused certain response costs both go to the issue of allocation, not liability." Nov. 19, 1993 submission at 7, n. 6. If an agency action is arbitrary, capricious, or an abuse of discretion, it will not be sustained or enforced by the courts at all. See, e.g., In re Bell Petroleum Serv., Inc., 3 F.3d 889, 904-908 (5th Cir. 1993). Therefore, Amtrak property should not be subject to attachment by EPA for actions by the agency that were arbitrary, capricious or otherwise not in accordance with law.[5]

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[4] Defendant National Railroad Passenger Corporation's Memorandum Of Law In Support Of Its Motion For Summary Judgment Against The United States And In Opposition To The United States' Motion For Summary Judgment, dated July 16, 1993, R. 1040-1072; Reply Memorandum Of Law Of Defendant National Railroad Passenger Corporation In Support Of Its Motion For Summary Judgment Against The United States, dated October 8, 1993, R. 1073-1092.

[5] Amtrak assumes for purposes of this submission that EPA personnel have access to EPA's administrative record for the Paoli Rail Yard Superfund site.

It was arbitrary and capricious for EPA to select the residential soils remediation standard of 2 ppm because, among other things, EPA admitted in the PRAP and at the March 24, 1992 public meeting that its own risk calculations demonstrated that the theoretical upper bound risk to the residents is already within the acceptable range specified in the National Contingency Plan. [6] Moreover, even before the maximum PCB concentration in residential surface soils was reduced by more than 99%, the ATSDR demonstrated through actual site-specific investigation, that the residents' PCB blood levels are no different that those in the general "background" population of the United States. [7]

It was arbitrary and capricious for EPA to select the remedy for sediment clean-up specified in the ROD because there is no evidence that PCBs from the Rail Yard have caused any material increase in the concentration of PCBs in Valley or Little Valley Creeks. Moreover, EPA's cleanup goal would result in no incremental health or environmental benefit, while creating adverse environmental impact due to disturbance of stream sediments and wetland areas.

It was arbitrary and capricious for EPA to base its decisions on an estimated risk to future workers that assumed Car Shop workers would continue to be exposed for 20 years, when EPA knew that SEPTA will relocate all Car Shop employees in 1994 and deed restrictions will govern future usage of the property.

It was arbitrary and capricious for EPA to require that one or more containment cells be constructed to contain the treated Rail Yard soils because: (i) a treatability study conducted during the Feasibility Study demonstrated that the

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[6] This conclusion is particularly significant given that EPA's toxicologist has admitted that EPA's risk assessment process inherently overestimates the risk by at least two to three orders of magnitude (100 to 1,000 times). EPA's more recent risk calculations are of questionable reliability and cannot justify EPA's decision, because neither the PRPs nor the public were given an opportunity to review and comment on them before EPA issued the ROD.

[7] Despite years of extensive research on the medical history of large groups of people who were extensively exposed to concentrated PCB liquids, including many with PCB blood levels more than two orders of magnitude (one hundred times) higher than the residential blood levels measured by ATSDR, there is no evidence that PCBs have caused any significant chronic health effects. See the report by the ATSDR for this site. R. 1093-1120.

physical stabilization technology is extremely effective, such that the treated soil would be one to two orders of magnitude (10 to 100 times) more protective (less permeable) than any containment cell; and (ii) EPA has not required the use of the containment cell at other Superfund sites where this treatment technology has been utilized.

EPA abused its discretion in denying the Railroads' repeated requests that EPA pursue the manufacturers of transformers as PRPs. Contrary to most transformer designs, the transformers supplied by the manufacturers were not totally enclosed products. Instead, they were designed with pressure relief valves that were intended to release PCBs under certain operating conditions. As such, the manufacturers expected and intended that PCBs would be discharged, released and otherwise disposed into the environment and they thus "arranged for" the disposal of these PCBs and are liable for response costs under Section 107(a)(4) of CERCLA, 42 U.S.C. §9607(a)(4). Proceeding against the manufacturers is particularly appropriate because they, unlike the Railroads, profited from the use of PCBs. If EPA refuses to impose liability on those who profited from their conduct, the Agency certainly should not impose liability on the publicly subsidized rail companies who were compelled by federal statutes to own and/or operate the Rail Yard. Such a result stands the policy behind CERCLA on its ear.

Therefore, under section 107(l), EPA can only recover for expenditures that are not arbitrary, capricious, or an abuse of discretion. Such agency action does not qualify under section 107(l) as "costs and damages for which [Amtrak] is liable to the United States."

C. The misconduct of Region III's On-scene Coordinator precludes EPA from recovering costs from Amtrak.

Region III submitted for the record in this proceeding (R. 104-207) cost data which raise significant factual and legal issues that should prevent imposition of the proposed lien. Region III employed an individual named Robert E. Caron as the on-scene coordinator for the early work at the Paoli Rail Yard and for whose work Region III is claiming costs. See, e.g., R. 156, 157. Mr. Caron is an admitted perjurer. He has given false sworn testimony concerning his educational background on several occasions in a number of federal actions. He lied about his academic qualifications in this very case by fraudulently claiming to hold bachelor and graduate degrees during his sworn testimony in open court. As a consequence of Mr. Caron's complete lack of academic qualifications, his propensity to lie, and his direct control over the EPA's activities at Paoli, the

Administrative Record developed in this matter is badly flawed and untrustworthy.

During its response action at the Paoli Rail Yard, the EPA constructed a defective erosion control system which caused the release of PCBs into the environment and allowed surface water runoff containing visible sediments to escape the Rail Yard and flow east along West Central Avenue through areas which were subsequently cleaned by the rail defendants pursuant to the Fifth Partial Consent Decree. EPA's defective "erosion control system", as well as EPA's other response activities were designed and implemented under the direct control of Mr. Caron.[8]

Moreover, Mr. Caron's negligent design and supervision of EPA's response activities needlessly caused the wasteful expenditure of substantial public funds. Although Mr. Caron testified before the Court that EPA's "erosion control" project was budgeted at an implementation cost of $300,000 [9], the Government had expended approximately $2,000,000 by the time Mr. Caron "finished" with the site.

In 1991, in United States v. Shaffer Equipment Co., 796 F.Supp. 938 (S.D. W.Va.), Mr. Caron testified that he had completed all of the degree requirements for a bachelor's degree in environmental science form Rutgers University. He further indicated that he had completed work towards a master's degree in organic chemistry. See R. 984. Upon investigation the defendants discovered that Mr. Caron was a complete fraud.

In 1986, Mr. Caron falsely testified before the Court in this matter to the effect that he held a bachelor's degree in environmental science with an engineering minor, as well as a master's degree in organic chemistry from Drexel. Mr. Caron was the only witness offered by EPA at the hearing of its motion seeking access to the Paoli Rail Yard.

It is unsurprising that the EPA response efforts were so flawed, given Mr. Caron's penchant for perjury and his evident lack of academic or scientific qualifications to work as an on-scene coordinator. Accordingly, the Administrative Record in this action has been severely compromised, and scant credibility should be given to any activity in which Mr. Caron played such an integral role.

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[8] See Additional Information Regarding Robert Caron's Extensive Involvement In The Administrative Record In This Case, attached hereto as Exhibit A.

[9] See R. 948.

The defendants in United States v. Shaffer Equipment Co. filed motions to dismiss based on the United States' alleged misconduct in concealing its knowledge of Mr. Caron's perjury. The court granted these motions and dismissed the case, finding that, although the Government knew that Mr. Caron did not have any college degree in September, 1991, it did not inform the court or counsel of this fact until mid-January, 1992, and moved for summary judgment based on the administrative record tainted by Caron's work. Notably, the Government did not advise the Court or defendants in the Paoli case of the allegations of misconduct concerning Mr. Caron until 1992 and did not submit a report to the court until August 1993. See United States' Report to the Court, R. 474, 501.

The Fourth Circuit recently reversed in part, affirmed in part, vacated and remanded the order of the Southern District of West Virginia in Shaffer Equipment.[10] Although the Fourth Circuit reversed the dismissal with prejudice of Region III's enforcement action based in part upon Mr. Caron's work, it upheld the lower court's finding of professional misconduct and the concept of sanctions for the attorneys and the agency who knowingly relied upon an administrative record tainted by Mr. Caron's work. R. 1134. Indeed, the Court stated that

> [g]iven the great possibility that Caron's deception affected administrative decisions in this case and disguised a weakness in his capabilities, we cannot agree with the government that the sole relevance of the "Caron problem" is with regard to impeachment of Caron's testimony. That approach is too narrow. . . . We thus reject the government's position that the court is essentially stuck with an unimpeachable administrative record. . . . When the government's attorneys filed a motion of summary judgment dependent on the administrative record made by Caron and requested a favorable resolution of the case prior to a full documentation of the perjury, these attorneys overstepped the bounds of zealous advocacy, exposing themselves and their employers to sanctions.

(R. 1134-35.)

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[10] United States v. Shaffer Equipment Co., 11 F.3d 450, 62 U.S.L.W. 2404 (4th Cir. 1993). Copy attached at R. 1124-1138.

Contrary to Region III's brief dismissal of the "Caron problem" in its Nov. 19, 1993 submission (at 11), the factual and legal issues raised by this problem have not been "thoroughly evaluated," except by the self-serving statements of the very same EPA regional office that already has been subjected to sanctions for nearly identical enforcement behavior in the Shaffer Equipment case. The record in this proceeding contains a long and dismissive report (R. 474-938) prepared by representatives of Region III during the summer of 1993, before the decision of the Fourth Circuit, and without any opportunity for Amtrak or other PRPs to participate in the investigation of the facts. However, the Fourth Circuit disagreed with Region III's similar gloss in the Shaffer Equipment case on the significance of Caron's misconduct. In remanding the case for further hearing on the imposition of proper sanctions, the Fourth Circuit stated that

> [w]ithout suggesting a sanction which is appropriate, we point out that in considering the proper role of the administrative record in this case, and the respective burdens of proof, the district court may deny the government the benefit of any portion of the record or the right to claim any expense, which may have been tainted by Caron's misconduct, even if it becomes impossible to assess accurately the extent of that taint. Because of the government misconduct, the benefit of any doubt must be resolved in the defendants' favor.

R. 1137. (Emphasis added.)

In this lien proceeding, doubt also must be resolved in Amtrak's favor. There exist here significant factual and legal issues raised by Region III's attempt to impose a lien upon Amtrak based on a tainted administrative record. The Shaffer Equipment case clearly demonstrates that no Superfund lien should be perfected against Amtrak's property. Caron's substantial involvement in Region III's activities at the Paoli Rail Yard site taints and should prevent Region III from recovering for all or some of the costs it has asserted in the record here.

D. EPA cannot recover for the cost of overseeing remedial work performed by Amtrak and the other railroads.

The record in this matter reveals that a large portion of Region III's activities at the Paoli Rail Yard over the years has been mere oversight of work performed by Amtrak, Conrail and

SEPTA. United States v. Rohm and Haas Co., 2 F.3d 1265, (3d Cir. 1993), casts severe doubt on EPA's ability to recover for expenses exclusively related to overseeing the performance of parties who have entered into a series of five judicial consent decrees with EPA.[11] In addition to performing the entire RI/FS process, Amtrak and the other two rail companies have performed numerous protective and remedial actions at the Paoli Rail Yard since 1986. These are listed in Exhibit B, attached. The record here does not clearly identify which costs are attributable to oversight activities. In view of the substantial factual and legal questions regarding EPA's authority to recover oversight costs for Paoli Rail Yard activities, it is not reasonable for Region III to attempt to perfect a lien on Amtrak's property. Those factual and legal issues cannot and will not be resolved in this proceeding.[12]

V. EPA'S ENFORCEMENT AUTHORITY UNDER CERCLA SECTION 107, INCLUDING ITS AUTHORITY TO ATTACH AMTRAK'S PROPERTY, HAS BEEN STAYED.

Perfection of a lien on Amtrak's property is barred by court order. As set forth in Amtrak's September 15, 1993 submission, a stay order was entered by the United States Court for the Eastern District of Pennsylvania because the Special Court has assumed exclusive jurisdiction over issues concerning Amtrak's CERCLA liability. In response, Region III asserted that its attempt to invoke a federal statute to impose a legal restriction on Amtrak's property "is neither a civil action nor an administrative order, [therefore] the stay Order does not

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[11] "[I]f what the government is monitoring is not the release or hazard itself, but rather the performance of a private party, the costs involved are non-recoverable oversight costs. Costs of this type would include the costs of contractors hired by EPA to review the plans and work of a private party or its agents executing a response action." Rohm and Haas, 2 F.2d at 1279. See also FMC Corp. v. United States Dept. of Commerce, 10 F.3d 987, 994 (3d Cir. 1993) (R. 1139-63 (citing Rohm and Haas "in which we were unwilling to read "removal" in CERCLA section 101(23) to include governmental oversight of private remedial actions. . . . we would not read undesignated [government] conduct into the definition of "removal.") R. 1150.

[12] Under the Third Partial Preliminary Consent Decree (R. 291) Region III has an independent means to seek recovery from Amtrak and the other railroads of at least some of its oversight costs. Region III is pursuing that recovery concurrently with this proceeding. The extent of duplication in Region III's cost recovery efforts is unclear from the record in this proceeding.

apply." Region III's Nov. 19, 1993 submission at 10. This response betrays a misunderstanding of the nature of lien procedures in Pennsylvania and the scope of the stay order, and is at odds with the record in this matter.

EPA's authority to impose Superfund liens is granted by section 107(l) of CERCLA. Region III brought a federal court enforcement action against Amtrak, Conrail and SEPTA under section 107 of CERCLA. (R. 208-237.) Having invoked the court's jurisdiction under section 107, EPA then moved for a stay of "all proceedings" until the entry of final judgment by the Special Court or until further order of the court. The order makes clear that even EPA administrative, in addition to judicial, actions against Amtrak are stayed unless a motion is made to the court to lift the stay.

Pursuant to section 107(l)(3), Superfund liens are to be perfected by filing

> in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. . . . If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located.

EPA's 1987 Guidance (at 6) adds that "[t]his will likely be the same office where State Superfund liens are filed or where general real property liens, e.g. mechanic's liens, are filed."

In Pennsylvania, liens are perfected by filing a claim with the Prothonotary, who is, essentially, the clerk of the local court. See Hazardous Sites Cleanup Act, 35 P.S. § 6020.120. The law requires that upon receipt of a lien "[t]he prothonotary or equivalent official shall promptly enter upon the civil judgment or order docket the name and address of the responsible person and the amount of the lien." R. 1121-23. Accordingly, perfection of a lien in Pennsylvania is a proceeding invoking the aid and authority of the local court. It is a judicial enforcement proceeding that is covered by the stay requested by EPA and entered by the federal court.

Region III's assertion that it reserved its rights to contest the entry of the stay in its present form is beside the point. Region III has not sought modification of the stay order. Notwithstanding the cursory memorandum Region III has placed in

the record (R. 474), it is inconceivable that Region III could retain the ability under section 107 to perfect a CERCLA lien when that lien can only be perfected with the aid of a judicial proceeding.[13]

Consequently, Region III's authority under section 107 to perfect a lien on Amtrak's Paoli Rail Yard property is stayed "until the entry of final judgment by the Special Court, . . . or until further Order of [the United States District Court for the Eastern District of Pennsylvania]."

VI. REGION III'S ATTEMPT TO ENCUMBER AMTRAK'S REAL PROPERTY IS WHOLLY UNWARRANTED AND INAPPROPRIATE.

Region III should be prevented from perfecting a lien upon Amtrak's Paoli Rail Yard property because it is entirely inappropriate for a federal agency to attach railroad property owned by Amtrak. Amtrak acquired ownership of the Paoli Rail Yard through the Regional Rail Reorganization Act's Final System Plan, which was approved by Congress. See 45 U.S.C. §§ 717 and 718, and see R. 1046-1049.

Amtrak is a corporation authorized to be created by an act of Congress, the Rail Passenger Service Act, 45 U.S.C. § 501 et seq., and Amtrak is listed as a Government Corporation under 31 U.S.C. § 9101, along with entities such as the Federal Deposit Insurance Corporation ("FDIC") and the Resolution Trust Corporation ("RTC"). All of the preferred stock of the Corporation is owned by the United States.[14] Moreover, since Amtrak does not recover all of its operating costs through fares and other revenues, every additional dollar of expense to Amtrak must be provided by taxpayers. Therefore, the effect on the federal treasury of CERCLA enforcement activity against Amtrak is identical to the effect on federal entities.

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[13] If, somehow, the lien perfection proceeding in the Pennsylvania courts could be interpreted as "administrative" action, that too is covered by the stay. Indeed, expedited consideration of a motion to lift the stay is envisioned in order to address "an imminent and substantial endangerment to public health or welfare relating to the Paoli Rail Yard."

[14] "At September 30, 1993, 81,150,895 shares of $100 par value preferred stock were authorized, all of which were issued and outstanding. . . . All issued and outstanding preferred shares are held by the Secretary of Transportation for the benefit of the federal government." 1993 Annual Report of the National Railroad Passenger Corporation.

Region III asserts that the lien still may be perfected simply because Superfund and Treasury monies are not commingled. Nov. 19, 1993 submission at 10-11. That is beside the point. Region III's attempt to perfect a lien on Amtrak is unprecedented; Amtrak is aware of no instance in which EPA has perfected a lien on property owned, for example, by the FDIC or the RTC. Consequently, Region III's attempt to attach an operating rail yard owned by a federally funded entity is completely unwarranted and inappropriate.[15]

VII. CONCLUSION

Amtrak has demonstrated that material errors of fact and of law are being made by Region III in its attempts to perfect a lien on Amtrak's Paoli Rail Yard property. Under the applicable standards for review of Region III's record for perfecting a lien, the presiding officer should recommend that the lien should not be perfected. Given Amtrak's willingness to realize the purposes which a lien would accomplish, there is no need for Region III to perfect a lien now. The best course to follow would be to withdraw the Notice of Lien.

Thank you for your attention to this matter. Please do not hesitate to contact me by telephone at 202-906-2750 or by FAX at 202-906-2821 to discuss the possibilities for amicably resolving this matter or any other issue.

Sincerely,

Dennis M. Moore
Associate General Counsel

Enclosures for the record

cc: Superfund Records Center
L. Guy, Regional Hearing Clerk
R. Kossek, Presiding Officer
P. Lazos
C. Votaw (w/o enclosures)
C. Vaden (w/o enclosures)

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[15] In any event, Amtrak has expended approximately $3 million for remedial and investigative activities at the site. This constitutes an in-kind contribution of funds that the Superfund otherwise may have been required to expend. As we have shown above, Region III has not demonstrated that it has a good legal claim against federally-funded Amtrak in excess of that amount.

EXHIBIT A

ADDITIONAL INFORMATION REGARDING ROBERT CARON'S EXTENSIVE INVOLVEMENT IN THE ADMINISTRATIVE RECORD IN THIS CASE.

There can be no question that Mr. Caron was thoroughly involved in EPA's activities at Paoli. He was assigned as the OSC for the Paoli Rail Yard site in December, 1985. Mr. Caron conducted EPA's preliminary site assessment and he made the initial determination that an EPA response action was necessary. Mr. Caron wrote the "Immediate Removal Request" sent to the EPA Regional Administrator in February, 1986 which outlined three response options available to EPA and he proposed that the most comprehensive response option be selected by EPA. Mr. Caron concluded in this Request that an "imminent and significant risk to the environment" existed at Paoli and recommended that "action should be taken as soon as possible and be performed in a timely fashion, to avoid further contamination and public exposure". See "Immediate Removal Request", R. 3. This Request was approved.

Relying in part on the opinions expressed by Mr. Caron, EPA proclaimed that soil erosion from the Paoli Yard constituted an "emergency"[1]. Mr. Caron then requested the expenditure of CERCLA funds to "address the direct contact threat posed by the presence of PCB in one residential yard and along a major road". See "Approval to Undertake Emergency Action", R. 7-8. Mr. Caron's request was granted.

EPA subsequently demanded that the rail defendants address the alleged problem of soil erosion from the Rail Yard or face EPA remedial action. In response, Amtrak, Conrail and SEPTA retained highly qualified scientists and engineers to study the site and recommend an appropriate erosion control plan. These consultants proposed the construction of a series of on-site sediment barriers with various filtration media and the revegetation of embankments to control site erosion. This system was selected as appropriate because it would reduce or eliminate soil erosion and off-site migration of contaminated solids, the purported cause of concern for the site, without substantially disturbing the on-site soils or increasing the rate and volume storm runoff and soil erosion from the Rail Yard. Moreover, this plan effectively utilized the site's topography and did not concentrate surface water into a few storm water channels controlled by large, inefficient sediment basins prior to release form the site.

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[1] The EPA declared the situation at the yard on "emergency" in 1986, despite being first made aware of PCBs in the soil at the site in 1978 and of sediment runoffs no later than January, 1981, the date of the WAPORA Report.

The EPA rejected the defendants' proposal and decided to implement its own erosion control system. Accordingly, Mr. Caron sought approval form the Regional Administrator for additional funding for the EPA's erosion control plan, stating:

> The OSC has been advised by both regional counsel and the CERCLA enforcement section that it is unlikely that the responsible parties will perform the work which EPA requires. Additionally, they have not demonstrated the ability or expertise that is required to enable them to perform this critical activity. As a result of these facts, the OSC has been advised that it will be necessary for EPA to perform the work.
>
> The OSC, upon advice and guidance from both the Environmental Response Team (ER) and the Agency for Toxic Substances and Disease Registry (ATSDR), has determined that the control of off site migration must occur during this construction season. This is necessary in order to adequately protect the public health and environment and further reduce the risk posed by the presence of PCB in the residential community.

See "Request for Approval to Initiate Continued Emergency Action at the Paoli Railcar Facility", R. 9-14. This request was approved.

Mr. Caron directed the development of the EPA's "erosion control system" which was based upon a system of dikes and berms to channel surface water to three sedimentation basins to be excavated on the premises of the Rail Yard. Although EPA offered to allow the rail defendants to build this system, the offer was conditioned on defendants having detailed engineering drawings of the work to be done, and erecting temporary erosion barriers during construction.

After being advised by their environmental consultant that EPA's plan would actually increase the erosion of contaminated soil, the rail defendants declined to construct Mr. Caron's "erosion control" system.

The EPA subsequently moved for a court order to allow its contractors access to the Rail Yard to begin the construction of its "erosion control system". EPA claimed that immediate action was required to stop the off-site erosion of PCBs from the Rail Yard.

At a hearing held on August 26, 1986 before the United States District Court for the Eastern District of Pennsylvania, the EPA presented Mr. Caron as its only witness in support of its motion for access to the Rail Yard. Counsel for the Government identified Mr. Caron for the Court as:

> The gentleman who I would put on the stand would be the on-scene coordinator who has the responsibility under the statute to determine whether or not a removal action needs to be done and has been engaged in the discussions with SEPTA over the last week, has been engaged with our technical people over the last several weeks to prepare our plan and has also been engaged in the review of SEPTA's plan and the results of other people that found it inadequate.

See Transcript of Hearing Before the Honorable Anthony J. Scirica, (August 26, 1986) R. 943.

During the hearing Mr. Caron described his role at EPA as follows:

> Q: And can you tell the Court what your responsibilities are at the Environmental Protection Agency?
>
> A: Yes. I'm a federal on-scene coordinator. Primary responsibility is to organize and coordinate a federal response at the scene of releases or threatened releases of hazardous materials.

See R. 945.

When the Assistant U.S. Attorney asked about Mr. Caron's educational background, Mr. Caron testified:

> Q: How about your educational background please?
>
> A: I hold a Bachelor of Science degree in environmental science with an engineering minor. I hold a Masters degree in organic chemistry from Drexel.

See 945-46. (emphasis added). This testimony was absolutely false, although defendants did not learn this until years later.

Mr. Caron went on to describe the EPA's erosion control system in his testimony before the Court as:

> a system of diversionary structures which are designed to divert storm water flows away from sensitive areas and into sedimentation basins where the physical act of settling will reduce the contaminant load, and the resulting discharge will be relatively free of PCBs.

See R. 947. (Emphasis added).

Mr. Caron also testified that EPA was prepared to construct structures necessary to:

> divert the flow [of PCB containing run-off] away from the residential properties . . . and to eliminate the total amount of discharge of PCB-laden sediment to the environment by using basins.

See R. 949. (Emphasis added).

The Court subsequently granted the Government's motion for access to the Rail Yard. The Court found Mr. Caron's testimony to be very persuasive, as the Court's Order specifically stated that it would permit the EPA access to the Rail Yard for the purpose of allowing EPA to:

> Design and construct a sedimentation and erosion control system as described by EPA official, Robert Caron, in his testimony before this Court on Tuesday, August 26, 1986, to be described more fully in plans to be submitted by EPA to defendants.

See Order of August 28, 1986, paragraph 1 (emphasis added), R. 954. As Mr. Caron represented to the Court, the EPA was to design and construct an erosion control system which would result in a discharge "relatively free of PCBs".

Under Mr. Caron's supervision, the EPA contractors began construction of the "erosion control system" without the benefit of any detailed engineering drawings and without constructing temporary erosion control structures for most of the excavation work. [2] Although EPA eventually installed some filter

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[2] In fact, SEPTA had installed a fence consisting of chainlink and geotextile fabric along the northern boundary of (continued...)

fencing during construction, eyewitnesses noted that this installation was improper and ineffective in containing soil erosion. See Affidavit of Martin L. Brunges, R. 956-959.

Mr. Caron failed to establish any decontamination procedures for the EPA construction vehicles leaving the Rail Yard, which allowed the dispersal of soils throughout the Rail Yard and the escape of allegedly contaminated soils into the surrounding neighborhood along Central Avenue in Paoli. See photographs of soil dispersed onto Central Avenue by EPA construction equipment, R. 960-61.

Mr. Caron's instructions to the EPA workforce and supervision were so inadequate that in at least one instance, EPA contractors removed soil from the Rail Yard and tossed it over a filter fence, thereby depositing it into a wholly unprotected area. As a result, excavated soil was allowed to erode unimpeded into the neighborhood. See R. 956-959.

Under Mr. Caron's direct supervision, the EPA's activities were characterized by careless construction procedures and the failure to take even the most rudimentary precautions to prevent off-site erosion, which resulted in the substantial migration of soil from the Yard. As previously mentioned, EPA workers routinely damaged or destroyed portions of the filter fabric fence enclosing the northern boundary of the Rail Yard. During the EPA's work, the rail defendants' consultants obtained one soil sample from an erosion gully running through a breach in this fence which revealed a concentration of PCBs of 6,050 parts per million ("ppm"). See R. 956-959.

Mr. Caron was as negligent with the design of the erosion control system as he was with the supervision of its construction. He essentially ignored the topography of the Yard by instructing EPA design engineers to use readily available data as opposed to accurate site surveys during construction of the sedimentation basins. As a result, the EPA situated two of its three drainage basins in a manner that prevented storm water runoff from flowing into them. Unsurprisingly, these basins remained dry during periods of precipitation, while increased quantities of surface water runoff in the Rail Yard flowed to the third basin.

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[2](...continued)
the Rail Yard in March, 1986 pursuant to the First Consent Decree. The fence was intended to provide security and prevent soil erosion. During EPA's work, however, portions of the fence were destroyed, allowing residential areas to be exposed to soil erosion. See R. 959.

This overburdened third basin discharged directly onto Central Avenue. Although Mr. Caron had been advised by the rail defendants' environmental consultant, of the necessity to connect the outflow pipe form this basin to the local stormwater sewer system, Mr. Caron arbitrarily dismissed this advice. This basin subsequently discharged significant quantities of storm water which ran easterly along the surface of Central Avenue, over a portion of the Johnson family property at 100 West Central Avenue, and continued across the intersection of Central Avenue and Hollow Road, from which it made its way into the headwaters of the Hollow Road tributary. See R. 960-961. As a result, the outflow from this basin significantly added to the presence of PCBs in the surrounding residential area.

There is no doubt that this one functioning sedimentation basis was ineffective in removing PCB sediments from its outflow, because the runoff from this basin was observed to have visible sediments. See Affidavit of David F. Lakatos, R. 962-969. Existing sampling data confirms this. The 1981 report by Wapora, Inc. makes reference to a sample obtained form the front yard of 29 Hollow Road as detecting 7.18 ppm of PCBs. In 1987, after the construction of the EPA's "erosion control" system, the rail defendants' consultant obtained more than a dozen soil samples from the same area of 29 Hollow Road which revealed PCB concentrations ranging from a low of 15 ppm to a high of 228 ppm.

Similarly, in February, 1986, one of the EPA's subcontractors, OH Materials, Inc., took sediment samples approximately 200 feet downstream from the headwaters of the Hollow Road tributary, which had PCB concentrations of 6.8 ppm and 4.9 ppm, respectively. After the EPA construction at the Rail Yard in the latter part of 1986, GTI acquired a sediment sample from the same general area of the Hollow Road tributary which had a PCB concentration of 190 ppm. In fact, the mean concentration of PCBs found in Hollow Road tributary samples was 14.3 ppm, more than twice the mean concentration in the other sampled tributaries. These increased results were caused, at least in part, by Mr. Caron's project, and it is clear that the EPA's "erosion control system" completely failed to produce a discharge "relatively free from PCBs".

This system's failure was immediately noticed by the residents of Central Avenue. One resident, speaking at a public meeting organized by the EPA, characterized EPA's system as follows:

> when that pipe was put there and the drain-off, looks like somebody would have had some sense to know that the water was going to be coming down there [to Central Avenue] that way. That was to me a dumb thing to do.

See Transcript of Public Meeting To Discuss Paoli Rail Yard PCB Site, at R. 971. (Emphasis added.)

After these deficiencies were brought to Mr. Caron's attention, the EPA constructed various diversionary structures, all to redirect the flow of surface water in the Yard. This improperly supervised and untimely work caused even more erosion and resulted in yet additional sediment to flow into Central Avenue from the one functioning basin.

Mr. Caron also negligently directed EPA contractors to strip away the protective clay layer of the soil cover at the two non-functioning sediment basins, thereby exposing the fractured bedrock and potentially opening a direct pathway to the previously uncontaminated groundwater basin underlying the site. See Affidavit of Paul Yaniga, R. 973-982 Permeability tests conducted on the soil outside the basins and in the basins confirmed that the floors of the basins were approximately 100 times more permeable than the surrounding soil in the Yard, making it that much easier for PCBs to enter the groundwater system. Id.

Contrary to Mr. Caron's representations to the Court, EPA's activities did not minimize soil erosion from the Rail Yard. Mr. Caron's decisions were undertaken without due care and were contrary to elementary construction and engineering principles. In fact, the EPA's work caused a substantial releases of soil from the Rail Yard off-site and created a significant threat of release of PCBs into the groundwater basin underlying the Rail Yard. See Affidavit of David F. Lakatos 962-969; Affidavit of Paul Yaniga R. 973-982. Any alleged PCB contamination in the Yard and surrounding community was most certainly exacerbated by the EPA's work.

The defective design and implementation of EPA's response activities at the Rail Yard are the direct result of the fact that Mr. Caron was unfit to serve as an OSC. Mr. Caron's lack of fitness is directly attributable to his lack of academic qualifications and his propensity to misrepresent the truth.

In May, 1992 Mr. Caron entered a guilty plea to a one-count criminal information for making false declarations in violation of 18 U.S.C. §1623 in the Paoli case and others. See Caron Plea Agreement dated May 29, 1992, R. 983-992.

EXHIBIT B

PROTECTIVE AND REMEDIAL ACTIONS TAKEN AT
THE PAOLI SITE SINCE 1986 BY THE RAILROADS

- SEPTA installed and Railroads have maintained security fencing around the Rail yard to restrict access. (1986 to present).
- SEPTA installed and Railroads have maintained silt fences to prevent erosion of PCB soils form the Rail Yard. (1986 to present).
- SEPTA washed all car shop repair pit surfaces, scarified all pit floors, and encapsulated all pit surfaces with epoxy to eliminate surface PCBs. (1986).
- SEPTA-EPA Worker Protection Stipulation provided for clean-side/work-side shop areas and laundering of employee clothing to prevent the spread of PCBs by human activities. (1987).
- SEPTA began routine cleansing of horizontal shop surfaces to remove surface PCBs. (1987).
- Railroads conducted an EPA-approved scientific environmental investigation of approximately 400 acres within the eastern section of Chester County, Pennsylvania, including comprehensive sampling and analysis of over 2,200 samples, to characterize the nature and extent of any PCB contamination. (1987 - to present).
- Railroads removed from areas off the Rail Yard approximately 3,000 cu. yd. of soil containing PCB concentrations greater than 50 ppm and representing approximately 900 lbs. of PCBs. This EPA-approved removal action restored 35 residential properties near the Rail Yard. (1988-1989).
- Railroads removed from the Rail Yard and land-filled approximately 150 cu.yd. of soil containing PCB concentrations greater than 10,000 ppm and representing approximately 2,010 lbs. of PCBs. (1990).
- Railroads initiated and maintained an EPA-approved program for recovery and disposal of fuel oil on the Rail Yard. (1990 to present).
- Railroads conducted a study of the feasibility of approximately 75 possible remedial technologies/processes and funded intensive Rail Yard soil treatment studies on 6 of those technologies. Railroads prepared an in-depth report on the feasibility of the various remedies studied. (1990-1991).

INDEX OF AMTRAK'S SUPPLEMENTAL DOCUMENTS
FOR INCLUSION IN PAOLI RAIL YARD
ADMINISTRATIVE RECORD FOR LEIN

1. Memorandum to Mr. James M. Seif, U.S. EPA, from Mr. Robert E. Caron, U.S. EPA, re: Request for Approval To Initiate Continued Emergency Action at the Paoli Railcar Facility, 8/15/86. P. 939 - 940.

2. Transcript of Hearing, United States of America, Plaintiff, v. SEPTA, et al, Defendants, Civil Action No. 86-1094, 8/26/86. P. 941-952.

3. Order, United States of America, Plaintiff, v. SEPTA, et al, Defendants, v. City of Philadelphia, Third-Party Defendant, Civil Action No. 86-1094, 9-28-86. P. 953-955.

4. Affidavit of Martin L. Brunges to the Commonwealth of Pennsylvania, County of Philadelphia, September 1987. P. 956-959.

5. Photographs. P. 960-961.

6. Affidavit of David F. Lakatos, Commonwealth of Pennsylvania, County of Chester, 9/15/87. P. 962-969.

7. Public Meeting to Discuss Paoli Rail Yard PCB Site, 6/24/87. P. 970-972.

8. Affidavit of Paul M. Yaniga, State of Maine, Cumberland, 9/24/87. P. 973-982.

9. Letter to David B. Irwin, Esq., from Richard D. Bennett, United States Attorney, District of Maryland, re: United States v. Robert Edward Caron, Plea Agreement, 5/29/92. P. 983-992.

10. Memorandum, Opinion and Order, United States of America Plaintiff, v. Shaffer Equipment Company, Anna Shaffer, Berwind Land Company, Berwind Corporation and Johns Hopkins University, Defendants, Civil Action No.5:90-1195, 6/17/93. P. 993-1013.

11. Report to the Court, United States of America v. SEPTA, et al., Civil Action No. 86-1094, 6/22/92 P. 1014-1030.

12. Affidavit of Susan M. Bauer, United States of America, Plaintiff, v. Shaffer Equipment Company; Anna Shaffer; Berwind Land Company; Berwind Corporation; and Johns Hopkins University, Defendants, Civil Action No. 5:90-1195, 1/27/92. P. 1031-1035.

13. Affidavit of Robert E. Caron, United States of America, Plaintiff v. Shaffer Equipment Company; Anna Shaffer; Berwind Land Company; Berwind Corporation; and Johns Hopkins University, Civil Action No. 5:90-1195, 1/21/92. P. 1036-1037.

14. Affidavit of Robert E. Caron, United States of America, Plaintiff v. Shaffer Equipment Comapny; Anna Shaffer; Berwind Land Comapny; Berwind Corporation; and Johns Hopkins University, Civil Action No. 5:90-1195, 1/23/92. P. 1038-1039

15. Defendant National Railroad Passenger Corporation's Memorandum of Law in Support of its Motion for Summary Judgment Against the United States and in Opposition to the United States' Motion for Summary Judgment, The Penn Central Corporation, Plaintiff, v. The United States of America, Consolidated Rail Corporation, Southeastern Pennsylvania Transportation Authority and the National Railroad Passenger Corporation, Defendants, Special Court No. 92-1, 7/16/93. P. 1040-1072.

16. Reply Memorandum Of Law Of Defendant National Railroad Passenger Corporation In Support Of Its Motion For Summary Judgment Against The United States, The Penn Central Corporation, Plaintiff, v. The United States Of America, Consolidated Rail Corporation, Southeastern Pennsyvania Transportation Authority and The National Railroad Passenger Corporation, Defendants, Special Court No. 92-1, 10/8/93. P. 1073-1092

17. Final Report, Technical Assistance to the Chester County, Pennsylvania Health Department, re: Exposure Study Of Persons Possibly Exposed To Polychlorinated Biphenyls In Paoli, PA., November, 1987. P. 1093-1120.

18. Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. sec. 6020.101 et seq., P. 1121-1123.

19. United States of America v. Shaffer Equipment Co., 11 F. 3d 450 (4th Cir. 1993), P. 1124-1138.

20. FMC Corporation v. United States Department of Commerce, 10 F.3d 987 (3d Cir. 1993), P. 1139-1163.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

SUBJECT: Request for Approval to Initiate Continued Emergency Action at the Paoli Railcar Facility

DATE: AUG 15 1986

FROM: Robert E. Caron, On-Scene Coordinator
Emergency Response Section (3HW22)

TO: James M. Seif
Regional Administrator (3RA00)

THRU: Stephen R. Wassersug, Director
Hazardous Waste Management Division (3HW00)

Issue

Your approval is requested to allow for the expenditure of CERCLA funds to address the continuing uncontrolled off site migration of PCB laden sediment emanating from this facility and directly impacting residential properties and nearby streams.

Background

On February 21, 1986, you approved the Immediate Removal Request for this site (attached). This approval was subject to your subsequent written approval to expend CERCLA funds, thereby prompting this reques

As you are aware, continued attempts to secure responsible party actions have been ongoing since February of this year, most recently involving a negotiated consent order for the design of onsite structures to control off site migration. The parties named in the aforementioned consent order did in fact submit a study and recommendations to EPA. However, it was four days late. A review of the submission by the CERCLA removal enforcement section found the study to be lacking in several areas. This review is attached for your perusal. The OSC has been advised by both regional counsel and the CERCLA enforcement section that it is unlikely that the responsible parties will perform the work which EPA requires. Additionally, they have not demonstrated the ability or expertise that is required to enable them to perform this critical activity. As a result of these facts, the OSC has been advised that it will be necessary for EPA to perform the work.

The OSC, upon advice and guidance from both the Environmental Response Team (ERT) and the Agency for Toxic Substances and Disease Registry (ATSDR), has determined that the control of off site migration must occur during this construction season. This is necessary in order to adequately protect the public health and environment and further reduce the risk posed by the presence of PCB in the residential community. Additionally, it is necessary to perform this work as soon as possible prior to the end of this construction season in order to avoid additional expense associated with adverse weather; and to perform contemplated off site removal which can only be carried out following completion of this work.

Proposed Action

- Complete a final acceptable design of an off site migration/soil erosion control structure that meets the following requirements:
1) Designed to last up to 5 years.
2) Conforms with accepted engineering practices.
3) Conforms with applicable soil erosion control regulations.
4) Effectively eliminates off site migration of PCB.
- Implement final design which will include construction of sedimentation basins and diversion structures.
- Investigate all available options as regards operations and maintenance of these structures.

The proposed budget is as follows:

ERCS (construction)	$250,000
TAT (engineering, administrative)	20,000
ERT (engineering, scientific support)	10,000
EPA (staff, overhead)	20,000
Estimated project total	$300,000

On June 27, 1986, the EPA headquarters comptroller's office advised the regional comptroller of an advice of allowance for $300,000 specifically for this site (attached). The OSC has verified that these funds are available for commitment.

Regional Recommendations

I recommend that you approve this action, based on the findings made in the previously approved Action Memorandum.

The estimated project costs are $300,000 of which $250,000 are extramural cleanup contractor costs.

You may indicate your approval or disapproval by signing below:

Approval _____ Date 8/15/86

Acting Reg Admin

Disapproval _____ Date _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	Civil Action 86-1094
v.)	Philadelphia, Pa. August 26, 1986
SEPTA, ET AL,)	10:10 a.m.
DEFENDANTS.)	

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE ANTHONY J. SCIRICA

TRANSCRIPT ORDERED BY: STEVEN J. ENGELMYER, ESQUIRE

APPEARANCES:

For the Government:	STEVEN J. ENGELMYER, ESQUIRE Assistant U. S. Attorney 3310 U. S. Courthouse Philadelphia, Pa. 19106
For the Defendants:	C. GARY WYNKOOP, ESQUIRE 1200 Four Penn Center Philadelphia, Pa. 19103 For Defendant SEPTA
	DAVID RICHMAN, ESQUIRE 2001 Fidelity Building 123 S. Broad Street Philadelphia, Pa. 19109 For Defendant Conrail
For Plaintiffs in Class Action:	ARNOLD COHEN, ESQUIRE Four Penn Center, Suite 700 Philadelphia, Pa. 19103
For the Commonwealth:	JAMES D. MORRIS, ESQUIRE Commonwealth of Pennsylvania 1314 Chestnut Street, Suite 1200 Philadelphia, Pa. 19107
Tape Monitor:	Carole Conroy
Transcribed by:	Diana Doman Transcribing 337 Maple Avenue Audubon, New Jersey 08106 (609) 547-2506

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(*Not specifically entered into evidence.)

service. And based on our discussions and negotiations that have occurred over the past week and even before that with SEPTA and their officials, we believe we can construct this system with no disruption to commuter service and very minimal disruption to the operations of the yard.

THE COURT: Very good. You have your people here that can explain what you propose to do?

MR. ENGELMYER: Yes, Your Honor, we do.

THE COURT: All right. And who are they?

MR. ENGELMYER: The gentleman who I would put on the stand would be the on-scene coordinator who has the responsibility under the statute to determine whether or not a removal action needs to be done and has been engaged in the discussions with SEPTA over the last week, has been engaged with our technical people over the last several weeks to prepare our plan and has also been engaged in the review of SEPTA's plan and the results of other people that found it inadequate.

THE COURT: I would like to hear from him, but before we do that, are there any other legal arguments that either side would like to present that have not already been presented in your briefs or in your motions? I don't know whether SEPTA and Amtrak and Conrail have had an opportunity to review EPA's brief that was filed last night and whether or not you wish to make any response to that.

Secondly, as to the public health threat or the threat to the welfare or the environment, there are documents in our administrative record from the Center for Disease Control, or what was formerly known as the Center for Disease Control, that was presented with these samples that EPA and defendants took indicating the high levels of PCBs. They told us that they believed there was a significant public health threat posed by these PCB contaminations both on site and off. Again, I emphasize it is not up to defendants to characterize or classify what the appropriate remedy at the site should be. We believe that is congress that has said EPA is supposed to make that determination. We have made it, we're ready to go, and we're really waiting for this Court to grant us access to perform what we believe are the appropriate response activities. Thank you, Your Honor.

THE COURT: Very good. Thank you, gentlemen. You may put on your witnesses.

MR. ENGELMYER: Your Honor, I'd like to call Mr. Robert Caron please. Your Honor, do you wish me to question from here or would you rather me from the podium?

THE COURT: Wherever you are more comfortable.

MR. ENGELMYER: Okay. Thank you.

CLERK: Please state your name for the record and spell your last name.

MR. CARON: Robert E. Caron; last name is spelled

C-A-R-O-N.

ROBERT E. CARON, PLAINTIFF'S WITNESS, SWORN

DIRECT EXAMINTION

BY MR. ENGELMYER:

Q. Mr. Caron, can you please tell the Court where you're presently employed?

A. I'm employed with the Environmental Protection Agency.

Q. And how long have you been employed with the Environmental Protection Agency?

A. Approximatey two and a half years.

Q. And can you tell the Court what your responsibilities are at the Environmental Protection Agency?

A. Yes. I'm a federal on-scene coordinator. Primary responsibility is to organize and coordinate a federal response at the scene of releases or threatened releases of hazardous materials.

Q. And could you give the Court just some idea of what your background is prior to joining EPA?

A. Yes. I spent four years working for two separate consultant agencies under contract to EPA to directly assist on-scene coordinators, three years as a process research and development chemist with FMC Corporation.

Q. How about your educational background please?

A. I hold a Bachelor of Science degree in environmental science with an engineering minor. I hold a Masters degree in

organic chemistry from Drexel.

Q. And have you been the on-scene coordinator assigned to the Paoli Rail Yard site?

A. Yes.

Q. And were you involved in the preparation of the erosion control plan that EPA intends to implement at the Paoli Rail Yard?

A. Yes.

Q. Could you tell the Court who else worked on that proposal please?

A. As I said before, primary function is to coordinate. The way we did that is utilizing our contract mechanism, is we secured the resources of a consulting firm with registered professional engineers with documented experience in soil erosion control and asked them to prepare a plan based on existing regulatory criteria.

Q. When you say "existing regulatory criteria," that the plan was based on that, can you please explain to the Court what you mean?

A. Yes. Under both the state and, to some degree, guidance from the federal government, there are manuals, engineering manuals, that are designed to aid engineers in designing such plans primarily for soil erosion and control and sedimentation.

Q. Have you been involved in soil erosion control plans at other hazardous waste sites as part of your duties as an

believe those documents are in the administrative record ...

THE COURT: Very good.

MR. ENGELMYER: ... concerning what Mr. Caron is addressing.

Q. (by Mr. Engelmyer) I'm sorry, Mr. Caron. If you have not completed, could you complete your description of the erosion control plan on this portion of the map please?

A. I think on this portion of the map which is consistent with all of the maps, what we have is a system of diversionary structures which are designed to divert storm water flows away from the sensitive areas and into sedimentation basins where the physical act of settling will reduce the contaminant load, and the resulting discharge will be relatively free of PCB.

THE COURT: Are you going to get into the discharge later on or is that ...

MR. CARON: Not really. I think that's it in a nut-shell. The discharge from the basins ...

THE COURT: All right. Then what -- where does the discharge go?

MR. CARON: At this point, all the basins will discharge onto Central Avenue and the storm water structures which already exist there.

THE COURT: An it's your determination that the existing storm sewers can handle that diversion?

THE COURT: All right.

Q. (by Mr. Engelmyer) Mr. Caron, before I forget, one of the issues that has been raised by defendants here is the cost involved here. Have you requested, as you are required to do, Superfund monies be obligated to allow you to perform this task?

A. Yes.

Q. How much money have you asked for?

A. $300,000.

Q. Has $300,000 ...

A. Right.

Q. ... been approved?

A. Yes.

Q. Is it your opinion you can build this erosion control plan for something around $300,000?

A. Yes.

Q. Okay. Again, I don't mean to interrupt you. I don't know if you're through describing what the erosion control plan would look like on this portion of the map.

A. I believe I'm done with that map.

Q. Okay. Can we go to the next map?

MR. ENGELMYER: And, Your Honor, I'd like to move this map into evidence please.

THE COURT: Very good. Any objection? Any objection ...

as you have described?
A. As I said before, we have an uncontrolled ...
MR. WYNKOOP: I'm going to object to that question, Your Honor. I don't know that the witness has been qualified as an expert into the rationale for doing it. He may be qualified as someone who can build it.
THE COURT: All right. I think I understand the reason for the objection. I think he is sufficiently qualified. He may not be the best person to answer this, but I'm going to overrule the objection and allow him to answer it. You may go ahead.
A. As a result of the uncontrolled nature of the existing discharge during storm events, we have contamination occurring of residential properties. We believe these structures are necessary to, number one, divert the flow away from the residential properties so that we can properly deal with the contamination that exists there now and also to eliminate the total amount of discharge of PCB-laden sediment to the environment by using the basins.
Q. Mr. Caron, has this determination been approved or have you consulted with other officials in reaching this determination that this erosion control plan needs to be implemented immediately?
A. Yes. As I said before, I'm a coordinator, and in order to reach these conclusions, we seek the advice of agencies like

that I have available to me and accessed from the Superfund.

THE COURT: Which is $300,000.

MR. CARON: Presently is $300,000.

THE COURT: No. Again, I'm having a little trouble understanding the process. Assuming that Weston is going to do this work for you ...

MR. CARON: Well, it won't be Weston, but it will be ...

THE COURT: Oh, all right.

MR. CARON: It will be the ERCS contract.

THE COURT: How do you determine the amount of money that's going to be paid?

MR. CARON: It is again by this team that I have gathered together ...

THE COURT: Okay.

MR. CARON: ... coming up with estimates based on engineering drawings, based on experience, case history, and any other mechanism that we can use to help us.

THE COURT: Your team, EPA team.

MR. CARON: EPA's team, correct.

THE COURT: And what do you do then?

MR. CARON: At that time, with that estimate and the drawings, we approach the regional administrator through an action memorandum. In this case, we already have a pre-approved action memorandum. Yet, we still went to the

regional administrator with a two-page memo stating that we would like to access the fund for this work. If I need additional monies, the same process would apply. In other words, if I did not have enough money to complete the project, I would have to go back to the regional administrator and request additional access to the fund.

THE COURT: What is the agreement that you make with the contractor?

MR. CARON: The contractor, the way the contract is structured, we issue what we call a delivery order which has a ceiling placed on top of it, and that delivery order also has a scope of work which I prepare.

THE COURT: All right. Now, wait a minute. Right now you've got $300,000 to do this work.

MR. CARON: That's correct.

THE COURT: Okay. Now, does the contractor know ahead of time that that's the amount of money that's available?

MR. CARON: He can if I tell him.

THE COURT: What I'm trying to find out is, is it going to cost 300,000 or is it going to cost more than 300,000?

MR. CARON: Right now ...

THE COURT: How is that determined?

MR. CARON: Right now, our estimate, as I said before, based on that team's effort at costing this, is

G-4 to you.

THE COURT: Could you please?

MR. ENGELMYER: Yes, sir.

THE COURT: All right. Anything else? All right. I'll see you at ten tomorrow. Thanks very much.

COUNSEL: Thank you, Your Honor.

C E R T I F I C A T I O N

"We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Diana Doman — DIANA DOMAN

Kathleen Nazarok — KATHLEEN NAZAROK

6-25-86"

DATE"

SJE:sq

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA Plaintiff, v. SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY ("SEPTA") NATIONAL RAILROAD PASSENGER CORPORATION ("AMTRAK") CONSOLIDATED RAIL CORPORATION ("CONRAIL") Defendants v. CITY OF PHILADELPHIA Third-Party Defendant.	:	FILED AUG 28 1986 CIVIL ACTION NO. 86-1094

FILED

AUG 2[illegible] 1986

MICHAEL E. KUNZ, Clerk

By [illegible] Dep. Clerk

ENTERED: [illegible]

CLERK OF COURT

ORDER

AND NOW, this day of , 1986, it is hereby ADJUDGED, ORDERED and DECREED that defendants SEPTA and AMTRAK, their agents, servants, employees and contractors, are ordered effective immediately to permit EPA, its employees, agents, contractors, assignees, transferees and successors or other authorized persons, to have full and complete access to the Paoli Rail Yard to perform the following actions.

(1) Design and construct a sedimentation and erosion control system as decribed by EPA official Robert Caron in his testimony before this Court on Tuesday, Ausgust 26, 1986 to be described more fully in plans to be submitted by EPA to defendants.

(2) In its performance of the activity described in paragraph 1 herein, EPA shall undertake no activities which will disrupt SEPTA's commuter rail service.

(3) In its performance of the activity described in paragraph 1 herein, EPA shall make every effort to minimize any disruption to SEPTA'S, AMTRAK's or CONRAIL's operations at the Paoli Rail Yard.

(4) Other than any disputes which may arise concerning paragraphs 2 and 3 herein, SEPTA's, AMTRAK's or CONRAIL's agents, servants, employees and contractors shall take no action which will interfere in any way with EPA's activities as described in paragraph 1 herein.

(5) SEPTA and EPA shall each designate a site coordinator who shall have the authority to represent their respective parties during the implementation of the activity described in paragraph 1 herein. Each site coordinator shall be primarily responsible for assuring that paragraphs 2 and 3 herein are followed to the maximum extent possible.

(6) EPA's site coordinator shall provide SEPTA's site coordinator with 24 hour notice concerning its daily schedule for implementation of the activity described in paragraph 1 herein.

(7) The following procedure shall apply should any dispute arise concerning this consent decree:

(a) Written notice of the dispute shall be provided immediately to the site coordinators for the respective parties.

(b) In the first instance, the parties shall make a good faith effort to resolve the dispute.

(c) Should the parties be unable to resolve the dispute, written notice shall immediately be provided to the Court's chambers with a

certification that good faith efforts to resolve the dispute have been unsuccessful.

(8) Safety rules provided by SEPTA shall be incorportated in the safety plan entered into between EPA and its contractors.

JUDGE ANTHONY J. SCIRICA

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA:
: SS
COUNTY OF PHILADELPHIA :

MARTIN L. BRUNGES, being duly sworn according to law deposes and says that he is a civil engineer employed in the Facilities Engineering Department of the Southeastern Pennsylvania Transportation Authority (SEPTA) and that:

1. He was assigned by SEPTA to observe construction of the EPA erosion control project and act as a liaison between EPA and SEPTA for the duration of the project;

2. Commencing September 4, 1986 he was present at the site on a daily basis and maintained a diary of activities at the site;

3. Excavation commenced on September 5, EPA's contractor removing the top 1 foot of soil from an 80 x 150 foot area. The removed soil was piled and neither the pile nor the excavated area was protected with silt fencing or other temporary means to prevent erosion or dust migration;

4. On September 6, excavation continued and some snow fencing was installed with filter fabric. The filter fabric was improperly installed in that it was not anchored into the ground hence water could flow underneath the fabric and sediment would not be filtered out. Filter fabric was not used on some snow fencing;

5. On September 9, EPA announced that all work would be done based on preliminary site plans and detailed engineering

drawings would not be prepared. To the best of his knowledge detailed engineering drawings were never prepared;

6. Excavation of Basin B progressed with no silt fencing or erosion control devices to prevent erosion of excavated soil;

7. Moderate winds during September 15-18 caused large quantities of dust from the excavation and hauling operation to be carried into the neighborhood;

8. On September 22 excavation for diversionary structures began in the throat area. No temporary erosion control structures were used and the SEPTA installed filter fence was undercut and destroyed. On September 23 a heavy rainfall caused the excavation to wash out and heavily contaminated soil was carried into the neighborhood;

9. On September 25, EPA contractors used a back-hoe to cut a trench in the throat area. The soil removed, which was highly contaminated, was dumped over the SEPTA filter fence into an area that was unprotected by erosion control devices allowing the contaminated soil to erode into the surrounding neighborhood. Heavy showers began at 6 p.m.;

10. On September 26, EPA was requested to reinstall filter fabric on the Minor Avenue gate. EPA refused stating that the gate was being utilized as a "relief valve" for heavy rainfall. Removal permitted surface water from the highly contaminated throat area to flow down a steep embankment into Minor Avenue;

11. On September 29, it was observed that the EPA contractor was moving construction equipment from basin to basin over Central Avenue without first decontaminating it. The equipment

had to traverse areas with high PCB concentrations, unquestionably carrying some of this contaminated soil into Central Avenue;

12. On October 3, silt samples were taken from the neighborhood in areas where EPA had allowed unprotected dirt piles to remain and in areas where construction had caused breaches in SEPTA's filter fence which EPA had not repaired. Analysis of those samples revealed PCB concentrations as high as 6,000 parts per million; and

13. The discharge pipe for Basin B was installed and discharges directly onto Central Avenue. Recent inspections reveal a significant amount of sediment in the discharge pipe indicating that the basin is not adequately filtering soil and is in fact discharging soil particles into the neighborhood along with water.

Martin L. Brunges
MARTIN L. BRUNGES

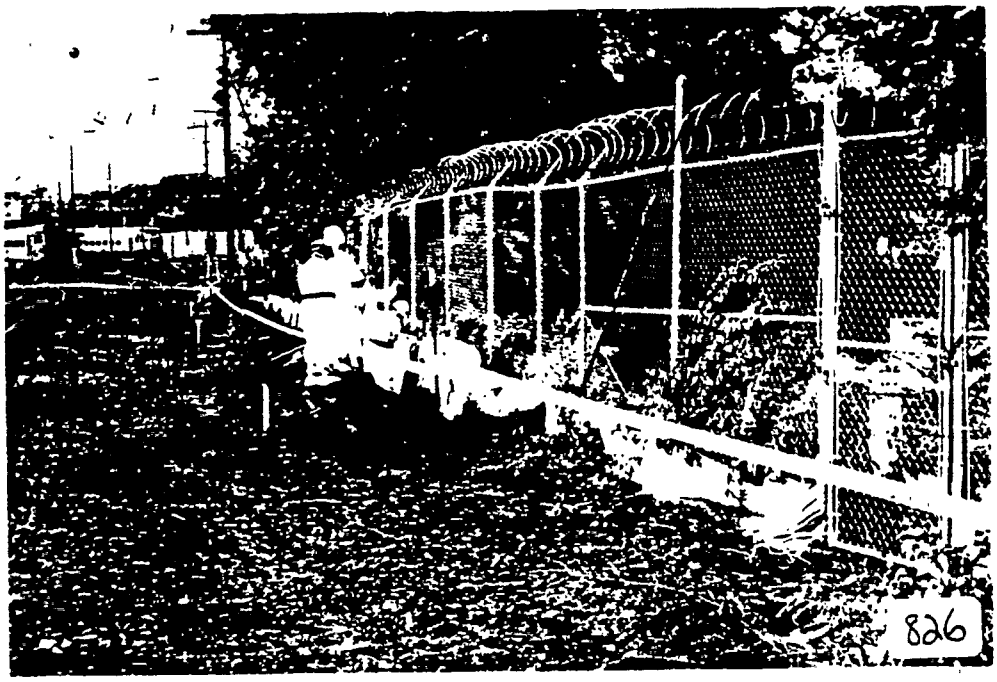
Sworn to and subscribed
before me this day
of September, 1987.

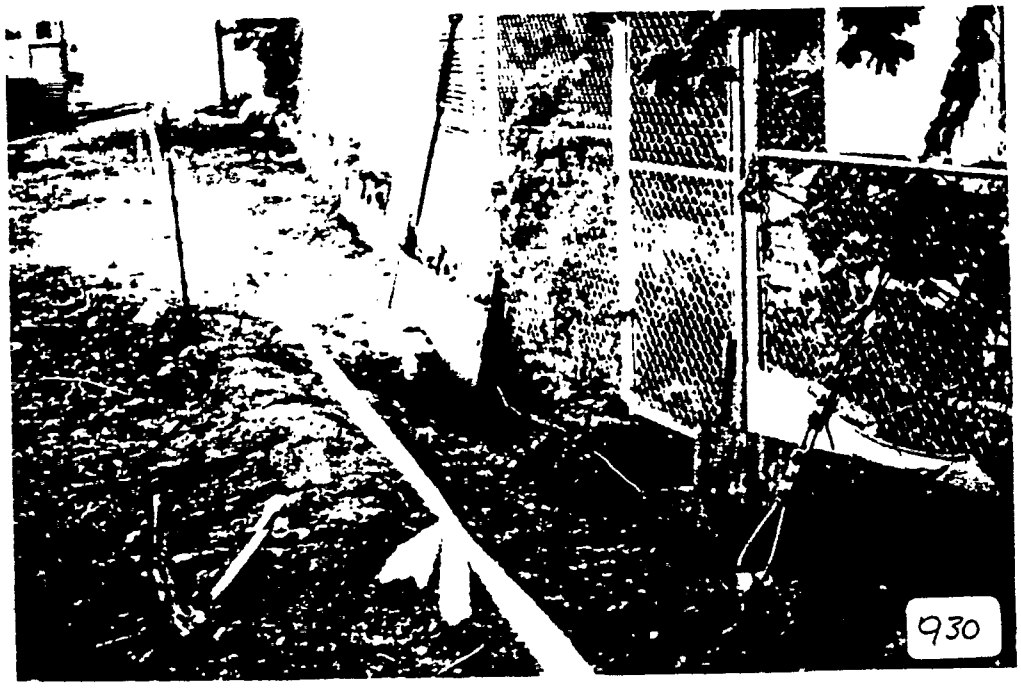
Notary Public

MARY D. LAVIN
Notary Public, Phila., Phila. Co.
My Commission Expires July 10, 1989

AR000958

AR000983





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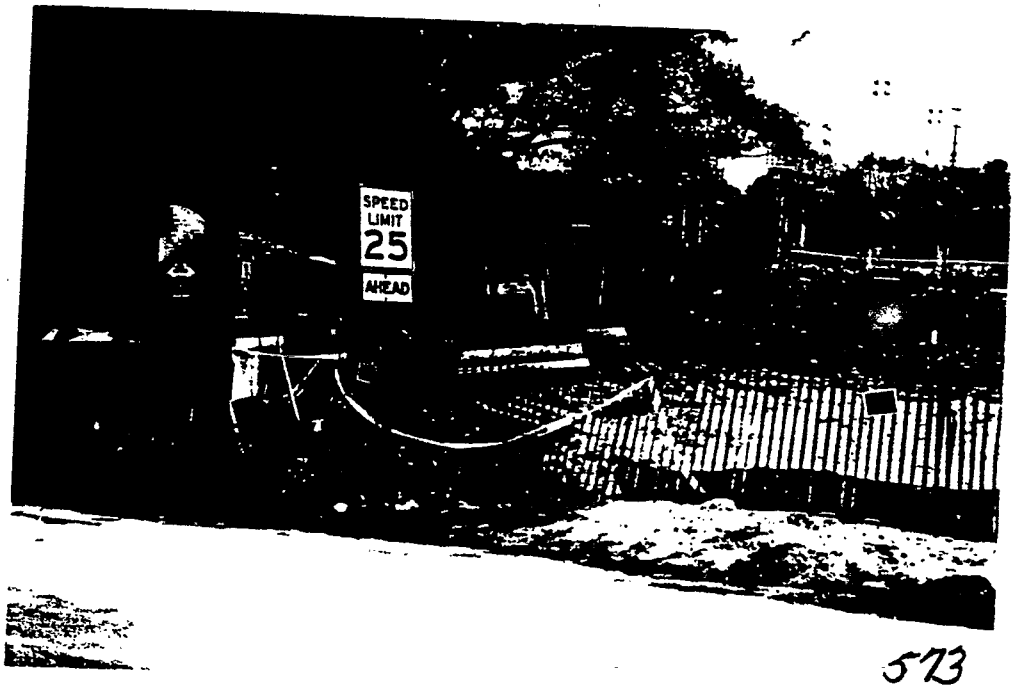

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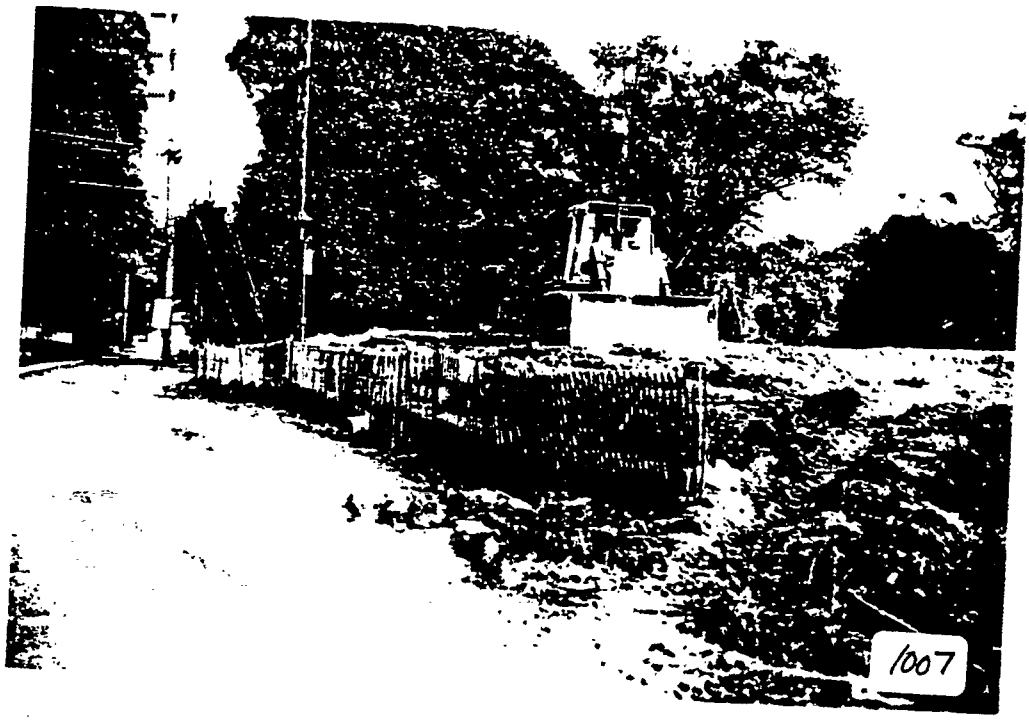

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COMMONWEALTH OF PENNSYLVANIA)
SS
COUNTY OF CHESTER)

1) DAVID F. LAKATOS, Being duly sworn and according to the law said he is the Vice President of Walter B. Satterthwaite Associates Inc. and the principal Water Resources Engineer for that concern. A true and correct copy of his current Curriculum Vitae is attached as Exhibit A to this Affidavit and incorporated herein by reference.

2) That he was retained to investigate surface water runoff at the Paoli Rail Yard, in the Summer 1986. As part of this, he was requested to research the preliminary construction plans prepared by the EPA for the construction of sedimentation basins and water diversion structures for the site.

3) As part of these investigations, he reviewed data gathered by GTI relating to the Paoli Rail Yard ("the site"), and investigated and the topography and runoff characteristics of the site during several site inspections.

4) As a result of his study, he concluded that the optimum type of erosion control system for the site would be a scientifically evaluated and engineering designed filter fence structure. Such a structure would have the following characteristics:

   a) The design would be based on a sound technical analysis of the erosion and runoff characteristics for the site, and would control erosion and runoff at or near its points of occurrence - as opposed to allowing and/or promoting runoff and associated erosion and then attempting to trap the eroded material in a traditional detention basin.

b) It would be designed to intercept and filter all surface water flow and associated sediment flows that could result from all storms with probabilities of occurrence up to that which could be expected to occur once in 100 years(i.e. a 100 year storm event).

c) Structural stability and longevity

d) Appropriately sized and designed filter media for the anticipated sediment size load and volume, as calculated for the various different sections of the site. Construction would be integrated with existing facilities and activities at the Paoli Rail Yard which is a working site.

e) The design strategy would be oriented toward public protection as it relates to off-site migration of any sediments that might contain PCBs - both from general site conditions as well as from site disturbance resulting from the construction process.

5) Affiant had reviewed the EPA design and found that it was inappropriate for site conditions and intended sediment retention and non-erosion goals for this particular site, for the following reasons:

i) Generation of additional run off and sediment loss during construction

ii) Potential for plugging and/or shortcircuting of runoff and sediment flows in the basin, with the release of sediments through the downstream areas.

iii) Increased erosion of previously deposited sediments in down gradient areas, because of high-velocity point source discharges of runoff from the detention basins.

iv) Increased on-site erosion of previously undisturbed areas due to reconfiguration of site topography and existing drainage patterns.

v) That, in addition to the costly general concept, the runoff volumes utilized by the government for designing the system were excessive, resulting in the design and construction of a system that is excessive for the anticipated site runoff.

6) That he finds the following, after an inspection of the government-designed erosion control system for the site;

a) Evidence indicating erosion from the site during, as well as after, the construction period.

b) The chances of increased velocity of runoff flows throughout the site, resulting in increased erosion of sediment from the site and particularly from areas of the site suspected to have excessive contamination by PCBs.

c) That, however, runoff volumes were insufficient to cause an appreciable amount of water accumulation in basins A and C, despite increased site erosion - indicating an uncontrolled accumulation of new PCB-laden sediments on-site that can be transported in the future by very high rain storm events.

d) The probability that the drainage swales leading to basins A and C were not constructed as to allow runoff in the drainage channel to flow to the basins.

e) That sediment escaped from the discharge pipes leading from basin B, creating a soil discharge for downgradient areas in the neighborhood. The discharge pipe from basin B was observed to contain sediment and to be discharging directly onto Central Avenue.

f) That the EPA-installed filter fabric located on the downstream end of the embankment slopes of basin B, was improperly installed and had failed to function properly - illustrating the common problem with "traditional"-filter fabric installations, that would not have occurred with the engineered and structurally sound filter fence proposed for this site.

7) Based upon his work and observation described above the affiant is of the opinion that the erosion control system as constructed by the United States Government is ineffective at preventing sediment migration from the Paoli site into the surrounding neighborhood and that a system of properly designed structures embodying adequately designed filtration media would have been far superior.

DAVID F. LAKATOS, P.E.

Sworn to and subscribed
before me this 15th day
of September 1987.

NOTARY PUBLIC

My commission expires:

GEORGE SEIDMAN
Notary Public Kennett Square, Chester County
My Commission Expires Feb. 23, 1988

AR000965

AR000990

WALTER B. SATTERTHWAITE ASSOCIATES, INC.

DAVID F. LAKATOS, P.E., PRINCIPAL
WATER RESOURCES ENGINEER

REGISTRATION

Registered Professional Engineer in Pennsylvania, Delaware, Maryland, New Jersey, New York and Virginia

CREDENTIALS

- B.S. Civil Engineering, University of Pittsburgh (1974)
- M.S. Water Resources Engineering, Pennsylvania State University (1976)
- American Institute of Hydrology
- American Water Works Association
- American Society of Civil Engineers
- American Public Works Association
- The Water Pollution Control Federation
- Certified Wastewater Treatment Plant Operator
- Certified Onsite Wastewater Treatment System Inspector (PA)

EXPERIENCE SUMMARY

- Over ten years' of practical consulting engineering experience in a full range of water resources engineering projects. Responsible for the development of the water resources engineering services at the firm, as a principal and vice-president of engineering. Specific expertise and project experience in the areas of: stormwater management modeling, planning and design; water quality management, including and emphasis in nonpoint source issues; water supply planning and design, including drought management; floodplain management modeling planning and design; wastewater treatment planning and design; site suitability assessment and total cost effective site design; dam safety analysis and design; coastal area engineering, including hurricane surge modeling; water distribution system modeling planning and design; water resources modeling, including most state of the art computer programs (along with model development, i.e., PSRM).

- Project Manager and Technical Coordinator for twelve recent watershed modeling and planning projects using computer simulation modeling and data digitization. Development of watershed-level stormwater management and flood control plans (technical, legal and institutional) involving regional stormwater detention facilities.

David F. Lakatos, P.E.
(continued)

- Technical Manager for watershed-level Non-point Source Pollution Management projects involving watershed modeling and development of practical control alternatives.

- Manager of public participation programs for watershed-level stormwater management "pilot" projects in Pennsylvania and New Jersey, development of socio-economic approach for development of a regional stormwater detention program.

EMPLOYMENT HISTORY

- 1979 to Present	-	Walter B. Satterthwaite Associates, Inc. Principal and Vice-President
- 1976 to 1979	-	Roy F. Weston Project Engineer
- 1974 to 1976	-	The Penn State University Graduate Research Assistantship - PSRM Development
- 1971 to 1974	-	Gilbert Associates, Incorporated Project Engineer (Part time)
- 1970 to 1971	-	Gibbons & Hatt Land Surveyors Land Surveyor

FIELDS OF COMPETENCE AND REPRESENTATIVE PROJECTS

Stormwater Management Modeling and Design

- Responsible for the concepts, approaches and procedures developed and utilized by the firm in this technical area.

- Computer model development and application in the areas of: watershed hydrology (including PSRM, TR-20, HEC-1, SWMM); hydraulic modeling (including HEC-2, EXTRAN, etc.); nonpoint source modeling (including NPS, storm, etc.); stream quality modeling (including QUAL-II, DOSAG, SWMM-RECEIVE, etc.); hurricane surge (including FEMA, NWS-SURGE, etc.); and others dealing with statistical assessments, rainfall evaluations, etc.

- Manager of watershed level stormwater and floodplain management modeling planning and design services for state programs, county level implementation projects, and "common sense" designs for industry.

- Technical coordinator for over a dozen major watershed level modeling and planning projects using computer simulation modeling and data digitization.

David F. Lakatos, P.E.
(continued)

- Manager of watershed level stormwater management and flood control plans (technical, legal and institutional) involving regional stormwater and flood control management facilities.

- Director of design services for stormwater and floodplain management for the land development industry.

- Technical manager for watershed level nonpoint source pollution management modeling and planning project involving watershed modeling and development of practical and implementable control alternatives.

- Project manager for numerous studies to define stormwater pollution characteristics and impacts under various land conditions and receiving water circumstances.

- Project manager of public participation programs for watershed level stormwater management "PIlot" projects in Pennsylvania, New Jersey, Maryland and New York, involving the development of social economic approaches and implementation of regional stormwater management programs.

Floodplain Management Modeling Planning and Design

- Technical manager for floodplain identification and assessment studies involving detailed hydraulic modeling (e.g., using HEC-II).

- Director of floodplain evaluation serves for both government and the land development industry.

- Technical manager for regional floodplain management system design services.

- Extensive experience in the federal flood insurance program, involving the detailed engineering modeling of streams in Pennsylvania, New Hampshire, Texas, Georgia.

- Manager of detailed floodplain prediction studies including those associated with dambreak evaluations for the federal dam safety program.

Water Quality Management Modeling and Planning

- Project manager for the development of the "Pilot" stormwater quality management plan for the Pennsylvania ACT 167 program.

David F. Lakatos, P.E.
(continued)

- Nonpoint source modeling planning for area wide water stormwater quality management plans in Pennsylvania, Kentucky, Texas, and the Island of Puerto Rico.

- Technical assessment of stormwater quality impacts of land development projects using numerous land use scenarios.

- Stream quality modeling using QUAL-II to asses water quality impacts of point and nonpoint source discharges. Technical manager for a state-wide demonstration project in New Jersey involving the development of a county level guidance manual for preparing regional stormwater quality management plans emphasizing the control of nonpoint source pollution impacts specifically those associated with toxic substances.

PUBLICATIONS

"Penn State Urban Runoff Model to Pinpoint Flood Peak Source Locations;" published in the Water Resources Bulletin, American Water Resources Association, Volume 15, No. 5; October 1979.

"Desk-Top Analysis of Non-Point Source Pollutant Loads;" presented at the Sixth International Symposium on Urban Runoff; University of Kentucky, Lexington, Kentucky, July 23-26, 1979.

"Stormwater Detention - Downstream Effects on Water Quantity;" presented at the Engineering Foundation ASCE Conference on Stormwater Detention Facilities, Planning, Design, Operation and Maintenance; Hennicker, New Hampshire; August 1 - 6, 1982.

- - -

IN RE:

PUBLIC MEETING TO DISCUSS

PAOLI RAIL YARD PCB SITE

- - -

June 24, 1987

- - -

Public meeting held at the Paoli Technology Center, 19 East Central Avenue, Paoli, Pennsylvania, commencing at 7:00 p.m., on the above date, before McKinley Wise, Registered Professional Reporter and Notary Public of the Commonwealth of Pennsylvania.

- - -

KRAUSS, KATZ & ACKERMAN
Litigation Support Services
4th Floor, Robinson Building
42 South 15th Street
Philadelphia, Pennsylvania 19102-2242
(215) 988-9191

VOICE: You know, that water is right there in front of my house. And when you say it's not contaminated it is fresh water.

VOICE: No. We're saying there is detectable levels of PCBs, but they are at such a low level we don't have any concern.

VOICE: Since I have been coming to the meetings, you have never said to us what is bad and what is good. You have said parts of it is dangerous. So I don't know why you keep trying to say that it's not dangerous. That water not only dangerous with PCB. It is dangerous for being out there with cars and whatnot going back and forth. It's right in front of my house.

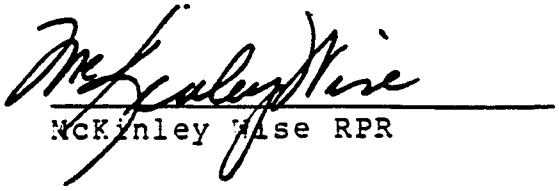
VOICE: Keep in mind --

VOICE: When that pipe was put there and the drainoff, looks like somebody would have had some sense to know that that water was going to be coming down there that way. That was to me a dumb thing to do. I don't know.

VOICE: Let me also say that water that is coming out there is the same volume of water that always came down that road. What's different is --

C E R T I F I C A T I O N

I hereby certify that the proceedings and evidence noted are contained fully and accurately in the notes taken by me on the hearing of the above matter, and that this is a correct transcript of the same.



McKinley Wise RPR

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(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

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AFFIDAVIT

STATE OF MAINE

CUMBERLAND, ss

PAUL M. YANIGA, being duly sworn according to law deposes and says that:

1. He is the Senior Vice President of Groundwater Technology, Inc. and the Principal Hydrogeologist for that concern. A true and correct copy of his current Curriculum Vitae is attached as Exhibit A to this Affidavit and incorporated herein by reference.

2. The affiant and Groundwater Technology, Inc. were retained by the Southeastern Pennsylvania Transportation Authority, the National Railroad Passenger Corporation, and the Consolidated Rail Corporation, to perform services in connnection with an environmental evaluation of the Paoli Rail Yard, located in Paoli Pennsylvania. Among the tasks assigned to the affiant was an evaluation of the physical condition of the site with respect to surface water run-off, an evaluation of the geology of the site and an evaluation of site hydrogeology.

3. In connection with the performance of these tasks, the affiant conducted several physical inspections of the site, performed surveys at the site, reviewed documents concerning geology and hydrogeology of the area, and documents indicating usages of the Paoli Rail Yard and sampling activities that had taken place prior to his engagement. He also designed, supervised, and directed activities at the site for the purpose of evaluating surface and subsurface conditions thereon. In addition, the affiant designed and tested alternate methods of sedimentation control for use at the site.

4. The affiant finds rainfall and concomitant surface water run-off from the rail yard itself tends to be restricted and controlled by the configuration of the rail yard. Specifically, the area of the site used as a rail yard is relatively flat and transsected by multiple rail lines which are constructed perpendicular to the surface water gradient and accompanied by a ballast consisting of deposits of stone beneath and about the track beds, which act to dissipate a flow of water across the surface of the yard and also to dissipate sediment carryoff. Surface water run-off was historically restricted to certain discrete areas, principally the area of the yard designated as the throat area running westward from Minor Avenue along the perimeter of the site. This throat area was characterized by embankments descending into backyards of two or three residences which abutted the yard at this point. Minor Avenue, which dead ends into the rail yard at the throat area, also received some run-off from this site.

5. The affiant finds that an engineered filter fabric fencing installed and tied into a barrier fence constructed by Septa along the perimeter of the property had proved effective in limiting off-site sediment transportation from the yard.

6. The affiant as part of his initial assignments in connection of the site investigated the suitability of installing an upgraded erosion control system to prevent any further migration of sediment from the site and in that regard, he investigated both the site and methods of erosion control. The ultimate conclusion of this study was the design of a system of erosion control structures involving filtration media specifically designed to accommodate conditions existing at the Paoli Yard. This design incorporating a filter media (fabric) fence was constructed and field tested at Groundwater Technology, Inc.'s Chadds Ford facility and found to be effective in preventing sediment transportation under conditions anticipated at the Paoli Yard. In point of fact, the sample cross section built at Chadds Ford was constructed in the Summer of 1986 and is still functioning effectively today.

7. The affiant personally inspected the erosion control project as constructed by EPA upon completion of that project. He determined on the basis of his

inspection that both the design of the proposed erosion control system and the final product of construction of that system were inadequate to meet the goal of eliminating off-site migration and, in fact, increase the risk of sediment migration from the site for the following reasons:

a) Soil and earth material disruption caused during the construction of the sediment basins generated steeper slopes showing evidence indicating erosion from the site during, as well as after, the construction period.

b) The steepened slopes as a result of regrading caused increased velocity of runoff flows throughout the site, yielding increased erosion of sediment from the site with particularly increased potential from areas of the site suspected to have PCB contamination.

c) Field construction control was inadequate to assure that the drainage swales leading to basins A and C were constructed in a manner that would allow runoff in the drainage channel to flow to the respective basins.

d) Sediment escaped from the discharge pipes leading from basin B, creating a sediment discharge for downgradient areas in the neighborhood. The discharge pipe from basin B was observed to contain sediment and to be discharging directly onto Central Avenue.

e) The EPA-installed filter fabric located on the downstream end of the embankment slopes of basin B, was improperly installed and had failed to function properly - illustrating the common problem with "traditional" - filter fabric installations, that would not have occurred with the engineered and structually sound filter fence that Amtrak, Conrail, and Septa proposed to construct at this site.

8) The affiant as part of his responsibilities directed the performance of permeability testing at the Paoli yard, adjacent to basins A and C and within basins A and C after their construction by EPA to assess the potential for short circuiting of the basins contents to groundwater. The testing revealed the following:

a) Permeabililty in the rail yard itself was revealed to be in the vicinity of 10^{-5} cm/sec.

b) That areas immediately adjacent to the basins showed that permeability was found to be 10^{-4} to 10^{-5} cm/sec.

c) The permeabililty within the basins themselves was found to be 10^{-3}cm/sec for basins C and 10^{-2} cm/sec for basin A or approximately 100 times more permeable than the surrounding soils and preconstruction conditions. This increase in permeabililty is directly related to alterations of surface conditions caused by the construction of the basins A and C. Specifically, the removal of the natural soil cover, exposing the fractured bedrock underlying the site from the excavation of basins A and C. The condition created by EPA's excavation for the basins increased the permeability so as to allow the more rapid passage of water or water with sediments contained therein (and possibly PCB's) to enter the subsurface groundwater system 100 or more times faster than if the basin had not been constructed. Further the exposure of the fractured bedrock underlying the site allows the passage of surface water and sediment into the groundwater system without the filtration/adsorption effect of the natural silty clayey soil layer, which was present prior to the EPA excavation activities.

PAUL M. YANIGA, VP

Personally appeared before me this ____day of September 1987, the above named Paul M. Yaniga and made oath to the truth of the foregoing statement.

Before me:

Notary Public

GROUNDWATER
TECHNOLOGY, INC.
OIL RECOVERY SYSTEMS
Chadds Ford West, Rt. 1, Chadds Ford, Pennsylvania 19317 (215) 388-1

Paul M. Yaniga
Senior Vice President
Principal Hydrogeologist

EDUCATION

BA, Earth Sciences, Bloomsburg State College
MS, Geological Science, Lehigh University

EXPERIENCE

Mr. Yaniga is the Founder of Groundwater Technology, Inc. and serves as Senior Vice-President and Principal Hydrogeologist of the Firm. In this double role, he contributes to the formulation of executive-level corporate policies, and also provides personal liaison for clients to insure strategic quality control and assurance in the design of projects that effectively meet clients' needs. Mr. Yaniga has expertise in geology, hydrogeology, soils, geochemistry, geophysics and hazardous wastes. His special interest is the practical application of scientific principles to the solution of "real-world" problems, thereby advancing the state-of-the-art in control and treatment of groundwater contamination by hydrocarbons and other industrial chemicals, and minimizing the potential risk and liability inherent in modern facilities, which all owners must face.

Mr. Yaniga's standing in the field of applied hydrogeology is based on his successful completion of numerous projects in the United States, the Carribean, Europe, Asia and South America. Through this experience, he has solved problems

involving solid waste disposal, hazardous waste assessment and control, groundwater recovery and decontamination, aquifer Paul restoration, community waste water treatment and the development of potable water supplies. Mr. Yaniga has prepared numerous detailed scientific reports and is an experienced expert witness.

Most recently, Mr. Yaniga's efforts have focused on advancing the development and recognition of bioreclamation as a state-of-the-art aquifer remediation tool. He is also making substantive technical contributions to complex situations requiring the abatement of pollution from free-, dissolved-, vapor, and adsorbed-phase organic chemicals in the subsurface.

Before he founded Groundwater Technology, Inc., Mr. Yaniga served as a project manager and hydrogeologist for two consulting firms, where he managed many projects requiring thepractical resolution of groundwater pollution and supply problems, and evaluation of site suitability for the land treatment and renovation of domestic wastewater and landfill leachates, and as hydrogeologist for the Pennsylvania Department of Environmental Resources, where his responsibilities included all aspects of land and water quality protection.

REGISTRATIONS AND PROFESSIONAL AFFILITIATIONS

Registered Professional Geologist, Delaware (No. 342)
Certified Professional Geologist, Indiana (No. 222)
Certified Professional Geologist, Virginia (NO. 656)

Certified Sewage Enforcement Officer, Pennsylvania (No. 040130)
Certified Professional Geologist, North Carolina (No. 920)
Certified Groundwater Professional, Association of Groundwater Scientists & Engineers, A Division of the National Water Well Association (No. 220)
American Institute of Professional Geologists
(Receive acknowledgement of professional proficiency from the Michigan Section AIPG Groundwater Consultants Committee)
National Water Well Association
Michigan Well Drillers Association, Technical Division
Pennsylvania Petroleum Association

PRESENTATIONS

Mr. Yaniga's stature in the industry is such that he is invited to give many presentations, seminars and short courses each year. Recently, these include:

"Aquifer Restoration via Accelerated In Situ Biodegradation of Organic Contamination"

Hazardous Materials Control Research Institute
Superfund Conference, December 1986, Washington, DC.

"Aquifer Restoration: Comprehensive Address to Organic Chemical Contamination"

National Water Well Association Conference: Petroleum Hydrocarbons andOrganic Chemicals in Groundwater -- Prevention, Detection and Restoration, November 1986, Houston, TX.

"Aquifer Restoration: Impacts of Fluctuating Water Levels in Gasoline Clean-up, South-Central Texas"

National Water Well Association Conference: Focus on Southwestern Groundwater Issues, October 1986, Tempe, AZ.

"Groundwater Protection and Waste Treatment Practices in the Electronics Industry: Practical Aspects of Treatment"

American Institute of Chemical Engineers Meeting, August 1986, Boston, MA.

"Restoration: Case Histories"

National Water Well Association: Underground Storage Tank Management Short Course, August 1986, Edison, NJ

"Monitoring and Remedial Action for Petroleum Contaminants (leaking underground storage tanks)"

Southern Company Services, Inc.: Groundwater short course for the Southern Electric System, August 1986 Birmingham, AL.

"Case Histories of Petroleum Hydrocarbons Clean-up"
"Physical Recovery of Petroleum Hydrocarbons"

National Water Well Association: Corrective actions for containing and controlling groundwater contaminants, July 1986, San Diego, CA.

"Bioreclamation of Hydrocarbon and Other Organic Contamination" (session moderator)

National Water Well Association: Sixth National Symposium and Exposition on Aquifer Restoration and Groundwater Monitoring, May 1986, Columbus, Ohio

"Solutions to Underground Tank Risks"

Groundwater Technology, Inc. seminar, May 1986, Atlantic City, New Jersey.

"Hydrocarbon Contamination of Groundwater: Assessment and Abatement"

University of Wisconsin: Groundwater Pollution Remedial Actions, January 1986, Madison, Wisconsin.

"Underground Storage Tank Management"

National Water Well Association short course, January 1986, Fort Worth, TX.

United States Attorney
District of Maryland

Richard D. Bennett
United States Attorney

Stuart A. Berman
Assistant United States Attorney

620 United States Courthouse
101 West Lombard Street
Baltimore, MD 21201-2692

410-962-2458
FTS 922-

May 29, 1992

David B. Irwin, Esq.
Irwin, Kerr, Green, McDonald and Dexter
250 W. Pratt Street
Suite 1133
Baltimore, Maryland 21201

Re: United States v. Robert Edward Caron

Dear Mr. Irwin:

This letter confirms the plea agreement which has been offered to your client, Robert Edward Caron, by the United States Attorney's Office for the District of Maryland ("this Office") and the United States Attorney's Offices for the Eastern District of Pennsylvania and the Eastern District of Virginia. If you and your client accept this offer, please execute it in the spaces provided below. The terms of the agreement are as follows:

1. Your client agrees to waive indictment and plead guilty to a one-count criminal information to be filed charging him with making false declarations, in violation of 18 U.S.C. § 1623. Your client admits that he is in fact guilty of that offense and will so advise the Court.

2. The maximum sentence provided by statute for the offense to which your client will plead guilty is as follows: imprisonment for five years, followed by a term of supervised release not to exceed three years and a fine of $250,000. In addition, your client must pay $50 as a special assessment under 18 U.S.C. § 3013. The Court may also order your client to make restitution pursuant to 18 U.S.C. §§ 3663 and 3664. Pursuant to 18 U.S.C. § 3612, if the court imposes a fine in excess of $2500.00 which remains unpaid fifteen (15) days after it is imposed, your client shall be charged interest on the fine, unless the court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3). If a fine is imposed, it shall be payable immediately unless, pursuant to 18 U.S.C. § 3572(d), the court provides for the payment of the fine on a date certain or in installments.

3. This Office and your client understand, agree and stipulate to the following statement of facts:

At all times pertinent to this Information, defendant ROBERT EDWARD CARON was employed by the United States Environmental Protection Agency ("EPA"), Region 3, in Philadelphia, Pennsylvania as chief of the Emergency Response and Preparation Section and as an on-scene coordinator at hazardous waste clean-up sites.

On March 15, 1988, in the United States District Court for the District of Maryland, defendant ROBERT EDWARD CARON testified under oath as a witness before the Honorable John R. Hargrove and a jury in the case of United States of America v. Virgil Cummings, Criminal No. HAR-87-0485, and knowingly made false material declarations concerning matters the Court and jury were hearing.

At the aforesaid time and place, the Court and jury were hearing evidence in a prosecution of Virgil Cummings for violations of Title 18, United States Code, Section 371, Title 42, United States Code, Sections 6928(d)(1) and 6928(d)(2)(A) and Title 18, United States Code, Section 2.

It was material to the Court and jury to determine the educational background of and university degrees held by defendant ROBERT EDWARD CARON and defendant's expertise with photoionization detectors.

At the aforesaid time and place, the defendant testified under oath before the Court and jury, and knowingly testified falsely with respect to the aforesaid material matters as follows (declarations charged as false are underscored):

Q Can you briefly describe for the Jury, your educational background?

A I have a bachelor of science degree in environmental science and I hold a master's degree in organic chemistry from Drexel University.

* * * * *

Q Have you received any training in photoionization?

A Yes, specifically from EPA, well, my college experience, number one. Photoionization detectors are commonly used in organic chemistry labs. EPA provided specific training and I had training from the manufacturer, themselves, on the use of their equipment.

Q And, in fact, was your master's thesis involving the use of photoionization meters and the gas photomacrograph?

A Yes.

The aforesaid material declarations of ROBERT EDWARD CAROM, as he then and there knew, were false in that: (a) the defendant did not have a bachelor of science degree in environmental science, or any other subject; (b) the defendant did not hold a master's degree in organic chemistry from Drexel University, or in any subject from any university; and (c) the defendant had not written a master's thesis involving the use of photoionization meters and the gas photomacrograph, or any other subject.

In addition to the false declarations recited above, ROBERT EDWARD CAROM also made material false statements concerning his educational credentials in the following sworn statements:

(1) In an Application for Federal Employment ("SF 171") dated September 20, 1983, defendant falsely stated that he had received a B.S. degree from Rutgers University in June 1978 and falsely stated that he had completed 15 hours towards a degree from Drexel University;

(2) In a SF 171 dated June 30, 1984, defendant falsely stated that he had received

a B.S. degree from Rutgers University in June 1978;

(3) In a SF 171 dated June 19, 1989, defendant falsely stated that he had received a B.S. degree from Rutgers University in June 1978 and an M.S. degree from Drexel University in June 1981;

(4) In a SF 171 dated March 25, 1991, defendant falsely stated that he had received a B.S. degree from Rutgers University in June 1971 and falsely stated that he had completed 20 hours at Drexel University;

(5) In a SF 171 dated September 13, 1991, defendant falsely stated that he had received a B.S. degree from Rutgers University in June 1978 and an M.S. degree from Drexel University in June 1981;

(6) In a Questionnaire for Sensitive Position ("SF 86") dated August 30, 1991, defendant falsely stated that he had received a B.S. degree from Rutgers University in June 1978;

(7) In an Application for Federal Employment ("OPM Form 1200") dated September 21, 1983, defendant falsely stated that he had received a B.S. degree from Rutgers University in June 1978;

(8) In an OPM Form 1200 dated November 23, 1983, defendant falsely stated that he had received a B.S. degree from Rutgers University in June 1978;

(9) In a deposition in United States v. Shaffer Equipment Co., et al., Civil Action No. 5:90-1195 (S.D. W.Va.), taken in the Eastern District of Pennsylvania on Sept. 12, 1991, defendant made the following underscored false statements:

Q What is your educational background beginning with high school, please?

A High school, graduated in New Jersey. Completed all the requirements for environmental

science degree from Rutgers. Close to matriculating [sic] that.

* * * * *

Q In what field is the bachelor's degree that you are seeking?

A Environmental science.

Q And the Master's?

A Organic chemistry.

(10) In an affidavit in United States v. Stockbridge Community Association, Inc., Civil Number 91-01356-A (E.D. Va.) on September 23, 1991, defendant made the following underscored false statements:

> I have completed the requirements for a Bachelor's Degree in Environmental Science from Rutgers University (1978), with a minor in Chemistry. I have nearly completed requirements for a Master's Degree in Organic Chemistry from Drexel University.

(11) In a deposition in FMC Corp. v. National Aeronautics and Space Administration, et al., Civil Action No. 90-6558 (E.D. Pa.), on June 3, 1991, defendant made the following underscored false statements:

> Q . . . Mr. Caron, would you please state your educational background, starting with post high school?
>
> A I have a Bachelor's BS in environmental science from Rutger's [sic] University in New Brunswick, New Jersey. I hold a Master's Degree in organic chemistry from Drexel University.

(12) At a hearing in United States v. SEPTA, et al., Civil Action No. 86-1094 (E.D. Pa.), on August 26, 1986, defendant made the following underscored false statements:

> Q How about your educational background please?
>
> A I hold a Bachelor of Science degree in environmental science with an engineering minor. I hold a Masters degree in organic chemistry from Drexel.

The aforesaid material declarations of defendant ROBERT EDWARD CAROW, as he then and there knew, were false in that: (a) the defendant did not have a bachelor of science degree in environmental science or any degree in any other subject from Rutgers University; and (b) the defendant did not hold a master's degree in organic chemistry or any other subject from Drexel University or any other university, nor had he ever been enrolled in a master's program.

4. (a) This Office and your client understand, agree and stipulate to certain guideline factors:

> The false declarations offense charged in this case is governed by United States Sentencing Guideline § 2J1.3 (1987 version). The base offense level is 12. The defendant is entitled to a two level reduction in the offense level for acceptance of responsibility pursuant to § 3E1.1.

(b) At sentencing, this Office will contend that your client's false declarations substantially interfered with the administration of justice by causing unnecessary expenditure of substantial governmental or court resources, resulting in a three-level increase in the offense level. Guideline § 2J1.3(b)(2). Your client is free to oppose this enhancement. With respect to this issue only, this Office waives its right to appeal under 18 U.S.C. § 3742(b).

(c) Your client understands that neither the U.S. Probation Office nor the Court is bound by the stipulation, and that the Court will, with the aid of the presentence report, determine the facts relevant to sentencing. Your client understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the

determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. Your client understands that if the Court ascertains factors different from those contained in the stipulation, your client cannot, for that reason alone, withdraw his guilty plea.

(d) Your client understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was part of a pattern of criminal conduct from which he derived a substantial portion of his income.

(e) The defendant reserves the right to move the Court for a downward departure under the Guidelines. This Office reserves the right to oppose any such motion.

5. (a) At the defendant's sentencing, if the Court finds that the applicable offense level is 13, this Office will recommend that the Court impose a sentence at the lower end of the guideline range. If the Court finds that the applicable offense level is less than 13, this Office is free to recommend that the Court impose any sentence within the guideline range.

(b) This Office reserves the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning your client's background, character, and conduct.

(c) Other than the offense to which your client has agreed to plead guilty, he will not be charged with any other violations of federal criminal law in either the District of Maryland, the Eastern District of Pennsylvania, or the Eastern District of Virginia, for false statements concerning his academic or educational credentials made prior to the date of this agreement. This Office is not aware of any other ongoing investigation by any other United States Attorney's Office relating to false statements by your client concerning his academic or educational credentials. If at any time this Office becomes aware of any such investigation, this Office will bring this agreement to the attention of any such office and will recommend that no further charges be brought against your client.

6. Your client expressly understands that the Court is not a party to this agreement. In the federal system, sentencing is imposed by the Court, and the Court is under no obligation to accept the stipulations set forth herein and has the power to impose a sentence up to an including the statutory maximum stated above. If the Court should impose any sentence up to the maximum established by statute, your client cannot, for that reason alone,

withdraw his guilty plea. Your client understands that neither the prosecutor, defense counsel nor the Court can make a binding prediction of, or promise your client, the Guideline range or sentance that ultimately will apply to your client's case. Your client agrees that no one has made such a binding prediction or promise.

7. Your client understands that by pleading guilty he will be giving up the following constitutional rights. Your client has the right to plead not guilty. He has the right to be tried by a jury, or if he wishes and with the consent of the government, to be tried by a judge. At that trial, he would have the right to an attorney and if he could not afford an attorney, the Court would appoint one to represent him. During that trial, your client would be presumed innocent and a jury would be instructed that the burden of proof is on the government to prove him guilty beyond a reasonable doubt. Your client would have the right to confront and cross-examine witnesses against him. If your client wished, he could testify on his own behalf and present witnesses in his own defense. On the other hand, if your client did not wish to testify, that fact could not be used against him and a jury would be so instructed. He would also have the right to call witnesses on his own behalf. If your client were found guilty after a trial, he would have the right to appeal that verdict to see if any errors had been committed during the trial that would require either a new trial or a dismissal of the charges. By pleading guilty, your client will be giving up all of these rights except the right to appeal his sentence. By pleading guilty, your client understands that he may have to answer questions posed to him by the Court both about the rights he will be giving up and about the facts of this case. Any statements made by your client during such a hearing would not be admissible during a trial except in a criminal proceeding for perjury or false statements.

8. This letter states the complete plea agreement in this case. There are no other agreements, promises, undertakings or understandings between your client and the undersigned United States Attorney's Offices.

If your client fully accepts each and every term and condition of this letter, please sign and have your client sign the original and return it to me promptly.

Very truly yours,

Richard D. Bennett
United States Attorney
District of Maryland

By: _____
Stuart A. Berman
Assistant U.S Attorney

Michael Baylson
United States Attorney
Eastern District of Pennsylvania

By: _____
Michael Doss
Assistant U.S Attorney

Richard Cullen
United States Attorney
Eastern District of Virginia

By: Justin Williams
Justin Williams
Assistant U.S Attorney
Chief, Criminal Division

I have read this agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. No other promises or inducements have been made to me other than those contained in this letter. In addition, no one has threatened me or forced me in any way to enter into this agreement. Finally, I am fully satisfied with the representation of my attorney.

_____ Date: 5/29/92
Robert Edward Caron
Defendant

I am Mr. Caron's attorney. I have carefully reviewed every part of this agreement with him. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

_____ Date: 5/29/92
David B. Irwin, Esq.
Counsel for Robert Edward Caron